IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.40333 of 2015

(Arising out of Order-in-Appeal C. Cus. II No. 137/2014 dated 31.10.2014 passed by the Commissioner of Customs (Appeals – II), Chennai)

M/s. Acer India Pvt. Ltd. **Appellant**
R.S. No. 57/1, Karasoor Village
Villanur Commune
Thiruchitrambalam
Puducherry – 605 111.

Vs.

Commissioner of Customs (Import) **Respondent**
Custom House
No. 60, Rajaji Salai
Chennai – 600001.

APPEARANCE:

Shri Rohan Muralidharan, Advocate for the Appellant
Shri N. Satyanaranayanan, AC (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40011/2024

Date of Hearing : 11.12.2023
Date of Decision: 03.01.2024

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal C. Cus. II No. 137/2014 dated 31.10.2014 passed by the Commissioner of Customs (Appeals – II), Chennai. ('**impugned order**')

2. Brief facts of the case are that the appellant filed Bill of Entry dated 16.2.2013 for clearing the goods declared as 'Data Projector Model X 122H DLP XGA Projector 270 3D with carrying case'. The appellants claimed classification under Customs Tariff Heading (herein after referred to as CTH) 85286100 as projectors of a kind solely or principally used in an automatic data processing system of heading

8471 and exemption from basic customs duty in terms of Notification No. 24/2005-Cus dated 1.3.2005 (Sl. No. 17) and concessional rate of additional duty of customs at 12 % in terms of Notification No. 2/2008-CE (Sl. No. 63). After due process of law, the lower authority rejected the classification as claimed by the appellant and classified the goods under CTH 852869 and denied the benefit of Notification No. 24/2005. Aggrieved against the said order, appellants preferred appeal before Commissioner (Appeals) who vide the order impugned herein rejected the appeal and upheld the order passed by the lower authority. Hence the appellant is before this Tribunal.

2.1 No cross-objection has been filed by the respondent-department.

3. Learned counsel Shri Rohan Muralidharan appeared for the appellant and Shri N. Satyanarayanan, learned AR appeared for the respondent.

3.1 The learned counsel Shri Rohan Muralidharan submitted that Data Projectors- Model X1220h DLP XGA Projector 270 3D imported by them seeking classification under CTH 8528 6100 at Nil rate of Basic Customs Duty (BCD) as per Notification No.24/2005-CUs. dated 01.03.2005. The product had the following technical/ product specifications:

Description	**Specification**
Native Aspect Ratio	4:3
Contrast Ratio	3000:1
Brightness	2700 ANSI Lumens (Standard), 2160 ANSI Lumens (ECO)
Native Resolution	1024 x 768

The Appellant cleared the consignment on payment of duty under protest as the department wanted to classify the goods under CTH 8528 6900. The Learned Assistant Commissioner, thereafter, passed Order-in-Original No. 21062/2013 dated 13.06.2013 (hereinafter referred to as OIO) wherein the submissions of the Appellant were rejected and the assessment of subject goods finalised under CTH 8528 6900. On Appeal the Ld. Commissioner (Appeals) passed the impugned order upholding the findings in the OIO. The learned Counsel submitted that the issue in dispute in the present case regarding classification of data projectors has already been decided by several forums in favour of the Appellant and provided a tabular chart of the same in their written submissions, given during the oral hearing, as given here under:

Name of the Case	**Features of the Product in Dispute**	**Decision**
M/s. BenQ India Pvt Ltd. v. ADG(Adjudication), New Delhi, 2022 (9) TMI 690 - CESTAT NEW DELHI	**Data Projectors** **Native Aspect Ratio**- 4:3 or 16:10 **Brightness (Luminosity)-** More than 2500 lumens **Native Resolution**- 1024x768 1280x800 1900x1200 **Color Wheel**- RGB RGBCYM RGBW	The Hon'ble Tribunal observed that 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. It was held that that the data projectors are classified under CTI 8528 61 00/ 8528 6200 and the appellant has correctly availed the benefit of the exemption notification.
Epson India Pvt. Ltd. v. CC, Chennai, 2019 (366) E.L.T. 847 (Tri. - Chennai) affirmed by Hon'ble Supreme Court in *2019 (366) E.L.T. A173 (S.C.).*	**Business Projectors** **Aspect Ratio**- 4:3; 16:10 **Contrast Ratio**- 2000-3000:1 **Native Resolution**- WXGA 1024 x 768; WXGA 1280 x 800 **Brightness**- 2500-4000 Lumens	After taking into consideration the literature of the product, the Hon'ble Supreme Court held that the business projectors are classifiable under 8528 61 00.

Acer India (P) Ltd. v. CC, 2009 (11) TMI 931 - CESTAT CHENNAI,	<u>**DLP Data Projector**</u> **Native Aspect Ratio**- 4:3 **Native Resolution**- (1024 X 768, 1280 X 1024) **Contrast Ratio**- 2,000 to 4,000:1	After considering the technical specifications of the product, The Hon'ble Tribunal held that projectors are principally used for data projection by being connected to either a laptop or a desktop computer and are classifiable under CTI 8528 6100. DVDs can also be played from the DVD drive of a laptop and desktop computer through the projector apart from projecting 'power point' presentations, 'word' files, 'excel' charts etc. The Hon'ble Tribunal also observed that video compatibility does not come in the way of the projectors being classified under CTSH 8528 61 so long as the principal use of all such projectors with laptop and desktop computer systems is not doubted and as the sub-heading covers both 'sole use' as well as 'principal use'.
Dell India Pvt. Limited v. Commissioner of Central Excise, Customs and Service Tax, 2018 (5) TMI 1306 - CESTAT BANGALORE	**Native Aspect Ratio**- 4:3 **Native Resolution**- 1024 X 768 **Contrast Ratio**- 2,000 to 4,000:1	After considering the technical specifications of the product and previous decisions in favour of the Appellant, the Hon'ble Tribunal ordered classification of the projectors under CTH 85286100 as claimed by appellant with the benefit of Notification No. 24/2005- CUS and successor Notifications.
M/s. Casio India Co. Pvt. Limited v. CC, New Delhi, **2016 (12) TMI 379 - CESTAT NEW DELHI**	<u>**Data Projectors**</u> **Aspect Ratio**- 4:3 or 16:10 **Contrast Ratio**- 2,000:1 **Luminosity-** 2500 to 3000 lumens	After considering the technical literature produced by the Appellant, the Hon'ble Tribunal observed that the specifications of the imported goods are for the projectors which are meant for use as data projectors and not as video projectors; therefore, goods would be classifiable under CTI 85286100 for which the benefit of Notification No. 24/2005- CUS under its entry No. 17 would be available.

He also placed reliance on the following decisions wherein it has been held that the Data Projectors are rightly classifiable under CTI 8528 6100.

a) Sony India Pvt. Ltd. v. CCCE, New Delhi, 2019 (370) E.L.T. 1774 (Tri. - Del.)

b) ***CCCE, Hyderabad-II v. Aveco Viscomm Private Ltd., 2010 (9) TMI 436 - CESTAT, BANGALORE***

c) ***Commissioner of Customs (I), ACC, Mumbai v. Vardhaman Technology P. Ltd. [2014 (301) E.L.T, 427 (Tri. -Mumbai)]***

Further, in the Appellant's own case, the Hon'ble CESTAT of Chennai has decided the identical issue in favour of the Appellants vide Final Order Nos. 1643-1655/2009 dated 09-211.2609 reported in 2010-TIOL-401-CESTAT-MAD after taking into consideration the technical specifications such as native aspect ratio, resolution etc. The identical issue was decided by Hon'ble CESTAT Bangalore in favour Of the Appellants vide Final Order No. 1500/2010 dated 26.11.2010.

3.2 The learned AR has reiterated the points given in the impugned order. He took us through the last para on page 5 of the impugned which stated that the product catalogues mention that the projectors are capable of projecting video from any video source viz video player, DVD player etc. It can be operated without being connected to ADP machines by virtue of USB, composite video (RCA), S-video ports and audio-in-ports etc. They are hence not solely or principally for use with ADP machines. He said that courts have held that the classification of consumer goods should be done by looking at the way in which they are understood in the trade, by the dealer and the consumer. He felt that predominance should not be given to the technological test sought to be used by the Appellant. The Appellants themselves had marketed the projectors of having multiple use and he hence prayed that the impugned order be upheld.

4. We find that the Hon'ble Apex Court in **Commissioner of Central Excise Vs Wockhardt Life Sciences Ltd. [2012 (277)**

E.L.T. 299 (S.C.)] has examined the various test available for classification of goods. It held:

> "30. There is no fixed test for classification of a taxable commodity. This is probably the reason why the 'common parlance test' or the commercial usage test' are the most common [see *A. Nagaraju Bors.* v. *State of A.P.,* 1994 Supp (3) SCC 122 = 1994 (72) E.L.T. 801 (S.C.)]. Whether a particular article will fall within a particular Tariff heading or not has to be decided on the bases of the tangible material or evidence to determine how such as article in understood in 'common parlance' or in 'commercial world' or in 'trade circle' or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intension, when the statute was enacted [see *D.C.M.* v. *State of Rajasthan,* 1980 (4) SCC 71 = 1980 (6) E.L.T. 383 (S.C.)]. One of the essential factors for determining whether a product falls Chapter 30 or not is whether the product in understood as a pharmaceutical product in common parlance [see *C.C.E.* v. *Shree Baidyanath Ayurved,* 2009 (12) SCC 413 = 2009 (237) E.L.T. 225 (S.C.)]; *Commissioner of Central Excise, Delhi* v. *Ishaan Research Lab (P) Ltd.* - 2008 (13) SCC 349 = 2008 (230) E.L.T. 7 (S.C.)]. Further, the quantity of medicament used in a particular product will also not be a relevant factor for, normally, the extent of use of medicinal ingredients is very low because a larger use may be harmful for the human body. [*Puma Ayurvedic Herbal (P) Ltd.* v. *C.C.E., Nagpur* - 2006 (3) SCC 266 = 2006 (196) E.L.T. 3 (S.C.)]; *State of Goa* v. *Colfoax Laboratories* - 2004 (9) SCC 83 = 2003 (158) E.L.T. 18 (S.C.)]; *B.P.L. Pharmaceuticals* v. *C.C.E.* - 1995 Supp (3) SCC 1 = 1995 (77) E.L.T. 485 (S.C.)].
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> 31. However, there cannot be a static parameter for the correct classification of a commodity. This Court in the case of *Indian Aluminium Cables Ltd.* v. *Union of India,* 1985 (3) SCC 284 = 1985 (21) E.L.T. 3 (S.C.), has culled out this principle in the following words :
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>> "13. To sum up the true position, the process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the Tariff...."
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> 32. Moreover, the functional utility and predominant or primary usage of the commodity which is being classified must be taken into account, apart from the understanding in common parlance [see *O.K. Play (India) Ltd.* v. *C.C.E.,* - 2005 (2) SCC 460 = 2005 (180) E.L.T. 300 (S.C.); *Alpine Industries* v. *C.C.E., New Delhi* - 1995 Supp. (3) SCC 1*; Sujanil Chemo Industries* v. *C.C.E. & Customs* - 2005 (4) SCC 189 = 2005 (181) E.L.T. 206 (S.C.); *ICPA Health Products (P) Ltd.* v. *C.C.E.* - 2004 (4) SCC 481 = 2004 (167) E.L.T. 20 (S.C.); *Puma Ayurvedic Herbal* (supra); *Ishaan Research Lab (P) Ltd.* (supra); *C.C.E.* v. *Uni Products India Ltd.,* 2009 (9) SCC 295 = 2009 (241) E.L.T. 491 (S.C.)].
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> 33. A commodity cannot be classified in a residuary entry, in the presence of a specific entry, even if such specific entry requires the product to be understood in the technical sense [see *Akbar Badrudin* v. *Collector of Customs,* 1990 (2) SCC 203 = 1990 (47) E.L.T. 161 (S.C.); *Commissioner of Customs* v. *G.C. Jain,* 2011 (12) SCC 713 = 2011 (269) E.L.T. 307 (S.C.)]. A residuary entry can be taken refuge of only in the absence of a specific entry; that is to say, the latter will always prevail over the former [see *C.C.E.* v *Jayant Oil Mills*, 1989 (3) SCC 343 = 1989 (40) E.L.T. 287 (S.C.); *H.P.L. Chemicals* v. *C.C.E,* 2006 (5) SCC 208 = 2006 (197) E.L.T. 324 (S.C.); *Western India Plywoods* v. *Collector of*

> *Customs,* 2005 (12) SCC 731 = 2005 (188) E.L.T. 365 (S.C.); *C.C.E.* v. *Carrier Aircon*, 2006 (5) SCC 596 = 2006 (199) E.L.T. 577 (S.C.)]. In *C.C.E.* v. *Carrier Aircon,* 2006 (5) SCC 596 = 2006 (199) E.L.T. 577 (S.C.), this Court held :
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> "14.....There are a number of factors which have to be taken into consideration for determining the classification of a product. For the purposes of classification, the relevant factors *inter alia* are statutory fiscal entry, the basis character, function and use of the goods. When a commodity fall within a tariff entry by virtue of the purpose for which it is put to (sic. produced), the end use to which the product is put to, cannot determine the classification of that product."

Thus, while the 'common parlance test' or the commercial usage test' is generally preferable especially while classifying consumer goods but when the goods have to be tested for their sole or principal use, technological capabilities cannot be completely discarded. As per the Appellant the goods in the impugned case have a native resolution of 1024 x 768, native aspect ratio of 4:3 and contrast ratio 3000:1 and a pixel capacity of 1024 x 768 or less, which are normally not capable of efficient reception and projection of television or video signals. This along with other technological features plays a persuasive role in determining its intended use solely and principally with ADP machines. We find that the issue of classification of data projectors of various models has been examined by a Coordinate Bench of this Tribunal at Chennai vide Final Order Nos. 1643-1655/2009 dated 09.21.2009 in the Appellants own case i.e **M/s Acer India Pvt Ltd Vs Commissioner of Customs, Chennai**. The impugned goods are similar to the goods whose classification dispute came up for resolution in the said judgment. Para 3 of the said order is reproduced below:-

> "3. After hearing both sides and perusal of case records, we find that as per Chapter Note 5 (C) and (D) to Chapter 84, the monitors and projectors, not incorporating television reception apparatus are excluded from being classified under Heading 8471 even though they are of the kind solely or principally used in an automatic data processing system. We also find that projectors of a kind solely or principally used in an automatic data processing system of Heading

> 8471 are classified under sub-heading 8528.61. In fact, the impugned goods have been classified by the original authority in respect of 12 out of 13 cases under Heading 8528.61. Only in one case the same has been classified by the original authority in the residual category 8528.69. The impugned exemption Notification No. 24/2005 dated 1.3.2005 as amended during the relevant period exempts all goods falling under sub-heading 8528.61. The description under the sub-heading 8528.61 uses the expression 'of a kind solely or principally used'. From the arguments advanced before us as well as from the details furnished, we find that the impugned projectors are principally used for data projection by being connected to either a laptop or a desktop computer. DVDs can also be played from the DVD drive of a laptop and desktop computer through the projector apart from projecting 'power point' presentations, 'word' files, 'excel' charts etc. It seems to have weighed with the lower appellate authority that the projectors also had video compatibility as mentioned in the relevant catalogue. But such video compatibility does not come in the way of the impugned goods being classified under SH 8528.61 so long as the principal use of all such projectors with laptop and desktop computer systems is not doubted and as the sub-heading covers both 'sole use' as well as 'principal use'. Looking at the features of the impugned data projectors imported by the appellants, we have not doubt in our mind that the same merit classification under SH 852861 and automatically become entitled to exemption under Notification No. 24/2005 as the same exempts all goods under the said sub-heading. Hence, we set aside the impugned order and allow all the 13 appeals."

5. Keeping with judicial discipline we are inclined to follow the line of reasoning expressed by the Coordinate Bench above and hold that the video projectors are classifiable under Heading 85286100, they thereby become entitled to exemption under Notification No. 24/2005-Cus. dated 1.3.2005 The impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 03.01.2024)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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