(2021) 01 CESTAT CK 0018

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal Nos. 40017 Of 2019, 40463 Of 2020

M/s. Competition Team Technology (India) Pvt. Ltd. @Hash Commissioner Of Customs

Date of Decision : 15-01-2021

Acts Referred:
Customs Tariff Act 1975 — Section XVI

Citation : (2021) 01 CESTAT CK 0018

Hon'ble Judges : Sulekha Beevi C.S., J;P. Anjani kumar, Technical Member

Bench : Division Bench

Advocate : R. Parthasarathy, S. Balakumar

Final Decision : Allowed

Judgement

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1. The issue involved in both these appeals being the same, they were heard together and are disposed of by this common order.",

2. The issue relates to classification of LCD panels and parts of LCD panels. In Customs Appeal No. 40017 of 2019, the issue is with regard to the",

classification of LCD panels and the period of dispute is from January 2018 to February 2018. In Customs Appeal No. 40463 of 2020, the issue is with",

regard to classification of parts of LCD panels and the period of dispute is from February 2018 to February 2019.,

3.1 On behalf of the appellant, Learned Counsel Shri R. Parthasarathy appeared and argued the matter. His submissions can be summarized as under",

:,

(i) The appellant has been importing LCD panels for the period prior to February 2018. Subsequently, the appellant started manufacturing LCD panels",

also at their factory and accordingly imported parts of LCD panels for manufacture of LCD panels, which are ultimately used in the manufacture of", television sets.,

(ii) Under the Customs Tariff, Chapter Heading 8528 covers television reception apparatus (also known as TV sets) and Chapter Heading 8529",

covers parts which are suitable for use solely or principally with the said TV sets. On the other hand, Chapter Heading 9013, inter alia, specifically",

covers Liquid Crystal Devices (LCDs). While Tariff Item 9013 8010 covers LCDs, Tariff Item 9013 9010 covers parts of LCDs.",

(iii) The issue of classification of the LCD panels imported by the manufacturers of television sets was subject matter of dispute in the past. While,

various importers were seeking assessment under CTH 9013, which is applicable to LCD devices, the Department was insisting on classification",

under CTH 8529, which covers parts of television sets. Though the Tribunal upheld the classification under CTH 9013 in the case of M/s. Videocon",

Indus. Ltd. v. Commr. of C.Ex. & Cus., Aurangabad [2014 (314) E.L.T. 708 (Tri. â?" Mum.)] and other cases, the Department was insisting on",

classification under CTH 8529, as they had filed an appeal before the Honâ??ble Supreme Court.",

(iv) For the period till 13.12.2017, the effective rate of duty for goods falling under both CTH 8529 and CTH 9013 was the same and hence, the",

appellant was initially classifying the panels under CTH 8529 to avoid any dispute. However, with the imposition of higher Customs duties on goods",

falling under CTH 8529 with effect from 14.12.2017, the appellant claimed classification under Tariff Item 9013 8010 vide their letter dated",

05.01.2018 to the Adjudicating Authority. However, this was rejected by the Adjudicating Authority. Similarly, for import of parts of LCD panels, the",

appellant claimed classification under Tariff Item 9013 9010, which covers parts of LCD devices of Heading 9013.",

(v) The Department is of the view that CTH 9013 does not cover articles used for manufacturing televisions. The impugned goods are meant,

specifically for the manufacture of LCD/LED Televisions and LCD Televisions are classifiable under CTH 8528 72 18 and CTH 8528 73 10. The,

parts thereof are to be classified under CTH 8529.,

3.2 Learned Counsel for the appellant submits that the LCD panels are correctly classifiable under Tariff Item 9013 8010 and parts thereof are,

classifiable under Tariff Item 9013 9010 for the following reasons : Â, Â· As per Rule 3(a) of the General Rules of Interpretation, the heading which provides the most specific description shall be preferred over heading",

of general description; Â,

Â· The HSN Explanatory Notes to Rule 3(a) states that a description by name is more specific than a description by class and that if the goods,

answer to a description which more clearly identifies them, that description is more specific than one where identification is less complete; Â",

Â· Here, the description â??Liquid Crystal Devicesâ?? is more specific description by name. The impugned goods imported by the appellant",

squarely fall within the description of the LCD devices indicated in the HSN Explanatory Notes to CTH 9013; Â,

Â· CTH 8529 9090 is a residuary entry which covers parts of apparatus falling under CTH 8525 to 8528, which are not specifically covered",

elsewhere in the Tariff. Therefore, it is submitted that CTH 9013 8010 covering LCD is more specific than the residuary entry CTH 8529; Â",

Â· Moreover, what is sought to be covered under CTH 9013 is all kinds of Liquid Crystal Devices. The use of the term â??devicesâ?? signifies that",

a broader area of goods is sought to be covered under CTH 9013 and consequently, Liquid Crystal Devices will include other items, apart from",

LCD panels; Â Further, articles of Chapter 90 are specifically excluded from Section XVI of Customs Tariff (which covers Chapters 84 and 85)",

vide Section Note 1(m) to Section XVI; Â,

Â· The impugned goods cannot be classified under CTH 8529 by application of Note 2 to Section XVI because Section Note 2 starts with a rider that,

the said Note 2 will apply subject to Section Note 1 which, under 1(m), had already excluded articles of Chapter 90 from Section XVI, i.e., Chapters",

84 and 85; Â,

Â· The fact that the impugned goods are solely or principally used with TV sets is not relevant for the purpose of classification and classification is,

done only as per the Section/Chapter Notes and the General Interpretative Rules. For the various reasons stated supra, classification of the",

impugned goods under CTH 9013 is in accordance with the principles of classification; Â,

Â· Similarly, the impugned goods having a separate part number is also not relevant. The appellant submits that all the material which goes into the", manufacture of television sets have unique part numbers, including parts of general use such as nuts, bolts, screws, washes, cables, etc., which are",

made of various base metals. Rubber and plastic also have separate part numbers and yet they are not classified under CTH 8529, but under",

respective headings by application of Section/Chapter Notes; Â,

Â· The issue of classification of LCD panels has already been settled through various judicial pronouncements and is no longer res integra; Â,

Â· The Honâ??ble Apex Court in the case of M/s. Secure Meters Ltd. v. Commissioner of Customs, New Delhi [2015 (319) E.L.T. 565 (S.C.)]",

held that LCD panels used in electricity meters are to be classified as LCD device under CTH 9013 and not as part of electricity meters; Â,

Â· Following the decision of the Honâ??ble Supreme Court in the above case, the Tribunal in the case of M/s. Samsung India Electronics P. Ltd. v.",

Commissioner of Customs, Noida [2015 (326) E.L.T. 161 (Tri. â?" Del.)] held that the LCD panels used in television sets are to be classified under",

CTH 9013 only; Â,

9013,"Liquid crystal devices not constituting articles provided for more

specifically in other headings; lasers, other than laser diodes; other optical

appliances and instruments, not specified or included elsewhere in this

Chapter

9013 10,"-Telescopic sights for fitting to arms; periscopes; telescopes designed to

form parts of machines, appliances, instruments or apparatus of this

Chapter or Section XVI;

9013 10 10,-Telescopic sights for fitting to arms

9013 10 20,-Periscopes

9013 10 90,-Other

9013 20 00,"-Lasers, other than laser diodes

9013 80,"-Other devices, appliances and instruments

9013 80 10,-Liquid Crystal Devices (LCD)

9013 80 90,-Other

9013 90,Parts and accessories

- 9013 90 10,-For Liquid Crystal Devices (LCD)

9013 90 90,-Other

(1) Liquid Crystal devices consisting of a liquid crystal layer sandwiched between two sheets or plates of glass or plastics, whether or not",

fitted with electrical connections, presented in the piece or cut to special shapes and not constituting articles described more specifically in",

other headings of the Nomenclature.â??,

10.1 The authorities below have placed reliance on Note 2(a) of Section XVI to hold that parts of LCD panels would fall under CTH 8529 only.,

Section Note 2(a) reads as under:,

â??Notes,

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2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines (not being parts of the articles of",

heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:",

(a) Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487,",

8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;â??",

10.2 This point has been very well addressed by the Tribunal in the case of M/s. Samsung India Electronics P. Ltd. (supra).,

11.1 The very same issue came up for consideration before the Tribunal in the case of M/s. Samsung India Electronics P. Ltd. v. Commissioner of,

Customs, Noida reported in 2015 (326) E.L.T. 161 (Tri. â?" Del.). The competing classification with regard to Liquid Crystal Devices (LCDs)",

imported was CTH 9013 8010 as against CTH 8529 9090. The Department was of the view that the goods will fall under CTH 8529 by relying on,

Section Note 2(b) of Section XVI of the Customs Tariff Schedule. The Tribunal held that the goods would fall under CTH 9013 8010 and relied upon,

the decision of the Honâ??ble Apex Court in the case of M/s. Secure Meters Ltd. (supra). The relevant paragraph of the said judgement in M/s.,

Samsung India Electronics P. Ltd. (supra) is reproduced as under :, â??7. In the case of M/s. Secure Meters Ltd. v. CC, New Delhi - 2015 (319) E.L.T. 565 (S.C.,) the Supreme Court had an occasion to decide",

the classification of LCDs which were parts of energy meters. Declaring that those LCDs are covered under CTH 9013, the Supreme Court",

in paras 15, 16 & 19 observed as under:",

15. Keeping in mind the aforesaid nature of product in question, we revert to the tariff entries. It cannot be disputed that LCDs are",

specifically provided in Tariff Item 9013. The only condition is that such LCDs should not constitute â??articlesâ?? provided more,

specifically in other headings. In the present case, it is also not in dispute that LCDs imported by the appellant did not constitute any such",

â??articleâ?? which is more specifically provided in other headings. On the contrary, the Revenue wants to include in the same Chapter,",

i.e., Chapter 90, though under Entry 9028.90.10 as â??parts and accessoriesâ?. The only reason for including the goods under Chapter",

Heading 9028 is that the LCDs were to be used in the electricity supply meters. However, Entry 9028 does not pertain to LCDs but gas,",

liquid, etc., and includes electricity supply meters as well. Merely because these LCDs are to be used as parts in the said electricity supply",

meters, can it be said that they are to be included in Entry 9028? Here, Note 2 of this Chapter Notes becomes important since LCDs are",

used in the electricity supply meters only as parts thereof.,

Note 2(a) stipulates that parts and accessories which are goods included in the heading of the said Chapter, i.e., Chapter 90, are to be",

classified in their respective headings. Going by the plain reading of Note 2(a) it is clear that LCDs, which are goods and are used as parts",

in the final product mentioned in Chapter 90, namely, electricity supply meters, are to be classified in its respective heading. Respective",

heading, which is specifically provided, is 9013.",

16. It was sought to be argued by Ms. Kiran Suri that as per Note 2(b), when these LCDs are used solely for particular instrument, namely,",

electricity supply meter, it has to be classified with the said meter and, therefore, Chapter Entry 9028 would get attracted. However, this",

argument loses sight of the fact that Note 2(b) relates to â??other parts and accessoriesâ??, namely, it would apply to those parts and", accessories for which Note 2(a) is inapplicable. Once we find that in the present case Note 2(a) squarely applies, the irresistible conclusion",

is that the goods will be classified in Tariff Item 9013, which is the specific heading for these goods.",

â?¦â?¦â?¦â?¦â?¦..,

19. This contains a general explanation to Chapter Note 2 and mentions that where parts or accessories identifiable as suitable for use,

solely or principally with the machines, appliances, etc., they are to be classified with those machines/appliances. However, what is",

important is that immediately thereafter it is clarified that this general rule would not apply in certain circumstances. Sub-para of the above,

takes things beyond the pale of any doubt by making it crystal clear that those parts and accessories which in themselves constitute,

â??articleâ?? falling in any particular heading of this Chapter, the general rule will not apply and said article would fall in that particular",

heading. To demonstrate this, examples which are given, eminently fit into the case at handâ?¦.â??",

11.2 This decision was applied and followed by the Chennai Bench of the Tribunal in the case of M/s. Samsung India Electronics Pvt. Ltd. v. Commr.,

of Cus. (Air), Chennai in Final Order No. 41842 of 2015 dated 29.12.2015 [2016 (337) E.L.T. 87 (Tri. â?" Chennai)].",

11.3 Both these cases have been appealed against by the Department and the appeals are pending before the Honâ??ble Apex Court as reported in,

2017 (348) E.L.T. A84 (S.C.) and 2017 (345) E.L.T. A181 (S.C.). Though the Revenue has filed appeal, the decision rendered by the Co-ordinate",

Bench on the very same issue would be applicable.,

12. The Bench at Allahabad has also followed this decision in the case of M/s. Samsung India Electronics P. Ltd. v. Commr. of C.,C.Ex. & S.T.,",

Noida reported in 2018 (360) E.L.T. 1053 (Tri. â?" All.). Learned Counsel for the appellant has, in addition, relied on the decision rendered in M/s.",

Videocon Industries Ltd. v. C.C.E. [2009 (2) T.M.I. 814 - CESTAT MUMBAI].,

13. Considering the arguments put forward by the Learned Counsel for the appellant with regard to the rules of interpretation and also following the,

decisions rendered by various Benches of the Tribunal in M/s. Samsung India Electronics P. Ltd. (supra) and M/s. Videocon Industries Ltd. (supra),", we are of the considered opinion that LCD panels are classifiable under CTH 9013 8010 and parts of LCD panels are classifiable under CTH 9013,

9010. We do not find any reason to deviate from the ratio laid down in the decisions relied by the Learned Counsel for the appellant. As we hold the,

classifications to be under CTH 9013 8010 and CTH 9013 9010, the denial of exemption benefit to the appellant as per amendment Notification No.",

92/2017-Cus. dated 14.12.2017 is without any factual or legal basis and requires to be set aside, which we hereby do.",

14. In the result, the impugned orders are set aside.",

15. The appeals are allowed with consequential reliefs, if any. (Order pronounced in the open court on 15.01.2021)",