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**(2010) 11 BOM CK 0095**  
**In the Bombay High Court**  
**Case No : Customs Appeal No. 67 of 2010**

Videocon Industries Ltd.

APPELLANT

Vs

The Commissioner of Customs

RESPONDENT

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**Date of Decision :** 25-11-2010

**Acts Referred:**

Customs Act, 1962 — Section 129(C), 130, 130E  
Foreign Exchange Management Act, 1999 — Section 35

**Citation :** (2011) 263 ELT 28

**Hon'ble Judges :** R.M. Savant, J;J.P. Devadhar, J

**Bench :** Division Bench

**Advocate :** V. Sridharan, assisted with Bharat Raichandani and J. Sanghvi, instructed by, PDS Legal, for the Appellant; Pradeep S. Jetly, for the Respondent

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## Judgement

J.P. Devadhar, J.—Heard.

Admit on the following substantial question of law:

Whether on the facts and in the circumstances of the case, the Tribunal is justified in directing the Appellant to make pre deposit of Rs. Five Crores for entertaining the Appeal, when, in respect of similar appeals filed by the Appellant in the past, the Tribunal had granted full waiver of pre deposit?

2. By consent of both the parties, the Appeal is taken up for final hearing.

3. The Appellant has been regularly importing Liquid Crystal Device - Thin Film Transistor) Modules (for short herein after referred to as "LCDTFT"). The Appellant had claimed classification of the said LCD TFT under the tariff head 9013 80 10 of the Customs Tariff and had also claimed benefit of exemption under Notification No. 24/05. The Customs Authorities classified the LCD TFT imported by the Appellant, under tariff head 8529 90 90. On an appeal filed by the Appellant, the Commissioner of Customs (Appeal) upheld the classification determined by the assessing officer. On further appeal filed by the Appellant, the CESTAT, by its order dated 23.2.2009 held that the LCD TFT imported by the

Appellant are classifiable under tariff head 9013 80 10 as claimed by the Appellant and not under tariff head 8529 90 90 as claimed by the Revenue. Further Appeal filed by the Revenue against the order of CESTAT dated 23.2.2009 is pending before the Apex Court.

4. The dispute in the present appeal relates to import of LCD TFT by the Appellant during the period August 2006 to April 2008. In respect of these consignments, the Assessing Officer passed Orders in Original holding that the LCD TFT imported by the Appellant were classifiable under the tariff head 8529 90 90 of the Customs Tariff Act, 1975. On appeal, the Commissioner of Customs (Appeal) by his order dated 19th February 2008 upheld the order of the assessing officer. The Assessee thereupon filed further appeals before the CESTAT along with Stay Application. By the impugned order dated 28.06.2010 the CESTAT decline to follow its earlier order dated 23.2.2009 in view of the changes in the Tariff Heading introduced by the Finance Act 2006 & directed the Appellant to deposit Rs. 5 crores. Challenging the aforesaid order, the present appeal is filed.

5. Mr. Jetly, the learned Counsel appearing for the Revenue, raised a preliminary objection regarding maintainability of the appeal before this Court. According to Mr. Jetly, the appeal filed by the Appellant before the CESTAT relates to classification/rate of duty, and therefore, any order passed in that appeal including the order of predeposit would be an order made in the appeal relating to classification/rate of duty and therefore, in view of Section 130 r/w Section 130E of the Customs Act 1962, the appeal would be maintainable before the Supreme Court and not before this Court. Mr. Jetly submitted that since the appeal against the final order of the tribunal in a classification dispute is maintainable before the Supreme Court, then by applying the ratio laid down by the Apex Court in the case *Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another*, and the decision of this Court in the case of *Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another*, , it must be held that the appeal against the interlocutory order including the order of predeposit passed by CESTAT in a classification dispute is also maintainable before the Apex Court.

6. We see no merit in the above contention of Mr. Jetly. The order of predeposit is made on a prima facie view of the matter and the order of predeposit does not, in any way, amount to determining any question having relation to rate of duty or value of the goods. As rightly contended by Mr. Sridharan, the learned Counsel appearing for the Appellant, the argument of the Revenue cannot be sustained in the light of the decision of the Apex court in the case of *Navin Chemicals Mfg. and Trading Co. Ltd. Vs. Collector of Customs*, . In that case, the Apex Court considered similar expression namely "determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment" contained in Section 129C of the Customs Act 1962. Para 7 of the said judgment reads thus:

7. The controversy, therefore, relates to the meaning to be given to the expression "determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment". It seems to us that the key lies in the words "for purposes of assessment" therein. Where the appeal involves the determination of any question that has a relation to the rate of customs duty for the purposes of assessment that appeal must be heard by a Special Bench. Similarly, where the appeal involves the determination of any question that has a relation to the value of goods for the purposes of assessment, that appeal must be heard by a Special Bench. Cases that relate to the rate of customs duty for the purposes of assessment and which relate to the value of goods for the purposes of assessment are advisedly treated separately and placed before Special Benches for decision because they, more often than not, are of importance not only to the importers who are parties thereto but also to many other importers who import or propose to import the same or similar goods. Since the decisions of CEGAT in such matters would have wide application they are, by the terms of the statute, to be rendered by Special Benches. The phrase "relation to" is, ordinarily, of wide import but, in the context of its use in the said expression in Section 129C, it must be read as meaning a direct and proximate relationship to the rate of duty and to the value of goods for the purposes of assessment.

7. Applying the ratio laid down by the Apex Court in the aforesaid case, in our opinion, the predeposit order passed by CESTAT cannot be said to have direct and proximate relationship to the rate of duty/to the value of goods. The expression "determination" means decision on merits. Predeposit order does not decide any question having a relation to the rate of duty or value of goods as contemplated under Sections 130 or 130E of the Customs Act, 1962. Therefore, appeal against an order of predeposit passed by the Appellate Tribunal would be maintainable before the High Court. u/s 130 of the Customs Act, 1962, appeal against all orders of the Tribunal except orders determining the question relating to determination of rate of duty or value of goods are maintainable before the High Court. Therefore, the fact that the appeal u/s 130E of the Customs Act, 1962 against the order, determining the rate of duty or value of goods is maintainable before the Apex Court, cannot be a ground to hold that the appeal against the order of predeposit would also be maintainable before the Apex Court.

8. The decision of the Apex Court in the case of Rajkumar Shivhare (supra) and the decision of this Court in the case of Indoworth India Ltd. (supra) on which strong reliance was placed by Mr. Jetly, are distinguishable on facts. In the case of Rajkumar Shivhare (supra) the question was, whether a party aggrieved by an interim order passed by the Appellate Tribunal under the Foreign Exchange Management Act, 1999 can file an appeal before the High Court u/s 35 of the Foreign Exchange Management Act, 1999 or not. The Apex Court, held that u/s 35 of the Foreign Exchange Management Act, appeal is maintainable before the High Court even against the interlocutory order. It is relevant to note that Section 35 of the Foreign Exchange Management Act 1999 does not provide for

any exclusion whereas Section 130 of the Customs Act 1962 provides that appeals against certain orders would not be maintainable before the High Court. Therefore, the decision of the Apex Court in the case of Rajkumar Shivhare (supra) relating to Section 35 of the Foreign Exchange Management Act, 1999 would have no relevance in the present case. Similarly, the decision of this Court in the case of Indoworth India Ltd (supra) would have no relevance to the facts of the present case. In these circumstances, in our opinion, the order of predeposit passed by the Tribunal cannot be said to be "determination of any question having a relation to the rate of duty of customs or to the value of goods" so as to bar jurisdiction of this Court to entertain the appeal against the order of predeposit u/s 130 of the Customs Act, 1962. Accordingly, we reject the preliminary objection raised by the Revenue regarding the maintainability of the appeal before this Court.

9. Now turning to the merits of the appeal, the question to be considered is whether the Tribunal is justified in ordering predeposit in spite of the fact that the classification of LCDTFT has already been determined by the Tribunal by its order dated 23/2/2009. The only reason given by the Tribunal for not following its earlier order is that there is some amendment in the Tariff Entry 8528 by Finance Act, 2006. Perusal of the adjudication order shows that the classification of the imported LCDTFT is not based on the amendment introduced by Finance Act, 2006. In fact it is the specific case of the Revenue that prior to amendment as well as subsequent to the amendment introduced by the Finance Act, 2006, the LCDTFT imported by the Appellant are classifiable under tariff head 8529 90.90. Tariff Heading 8528, 8529 and 9013 to the extent relevant prior to and subsequent to the amendment introduced by the Finance Act, 2006 read thus:

#### CUSTOMS TARIFF ACT 1995 (PRIOR TO 2006)

##### Chapter 85

##### Electrical/electronic machinery & Equipment

1010

8528

Reception apparatus for television, whether or not Incorporating radiobroadcast, receivers or sound or Video recording or reproducing apparatus, video monitors and video projectors

8528 12 18

Liquid crystal display television set of screen size below 63 cm

U

12.5%

8528 13

Black and white or other monochrome

8528 13 10

Liquid crystal display television set of screen size below 25 cm

U

12.5%

8529

Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528

8529 90 90

Other

Kg

12.5%

Chapter 90

Photographic, medical, measuring & etc instruments

9013

Liquid crystal device not constituting articles provided for more specifically in other headings, lasers, other than laser, diodes, other optical appliances and instruments, not specified or included else where in this chapter.

9013 80 10

Liquid Crystal device (LCD)

U

Free

CUSTOMS TARIFF ACT, 1995 (SUBSEQUENT TO 2006)

Chapter 85

Electrical/electronic machinery and equipment

8528

Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus

1528 7218

Liquid crystal display television set of screen size below 63 cm

U

10%

85287310

Liquid crystal display television set of screen  
size below

25 cm

U

10%

8529

Parts suitable use solely or principally with the apparatus of headings 8525 to  
8528

8529 9090

Other

kg

10%

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 else where in this chapter

9013 80 10

Liquid crystal devices (LCD)

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Free

10. Perusal of the aforesaid Tariff Headings clearly show that the changes introduced by Finance Act, 2006 are in respect of Tariff Heading 8528 and not in Tariff Heading 8529 which according to the revenue is the relevant Tariff Heading in the present case. As noted earlier, the contention of the revenue that LCDTFT imported by the Appellant in the past were classifiable under Tariff Heading 8529 90 90 has already been rejected by the Tribunal. It is interesting to note that currently, clearance of LCD TFT imported by the Appellant is allowed on provisional basis under Tariff Heading 9013 80 10 as claimed by the Appellant on execution of bond without any bank guarantee.

11. In these circumstances, in our opinion, the tribunal was not justified in directing predeposit when the classification of the goods in question stands

concluded in favour of the Assessee and it is not even the case of the revenue that the amendment introduced by Finance Act, 2006 is applicable in the present case. In the result, we set aside the order of the CESTAT dated 30th June 2010 and direct the CESTAT to hear the appeal on merits without insisting any predeposit. We make it clear that the Tribunal shall dispose of the appeal on its own merit without being influenced by this order.

This Appeal is accordingly disposed of with no order as to costs.