CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85142 OF 2016

[Arising out of Order-in-Original CAO No: Pr.CC-DS/10/2015-16 Adj(I) ACC dated 31st October 2015 passed by the Principal Commissioner of Customs (Import), Air Cargo Complex, Mumbai.]

Lenovo India Pvt Ltd
Ferns Icon, Level -2, Doddenakundi Village,
Marathalli Outer Road, KR Puram, Hubli
Bangalore - 560037 … ***Appellant***

versus

Principal Commissioner of Customs (Import)
Air Cargo Complex, Sahar, Andheri (E),
Mumbai - 400099 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85143 OF 2016

[Arising out of Order-in-Original CAO No: Pr.CC-DS/10/2015-16 Adj(I) ACC dated 31st October 2015 passed by the Principal Commissioner of Customs (Import), Air Cargo Complex, Mumbai..]

Milind Manohar Joglekar
House 486, 5th Cross, 2nd Block, RT Nagar
Bangalore - 560032 … ***Appellant***

versus

Principal Commissioner of Customs (Import)
Air Cargo Complex, Sahar, Andheri (E),
Mumbai - 400099 ***…Respondent***

APPEARANCE:

Ms Tridipa Banarjee, Advocate for the appellants

Shri Maonoj Das, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/86055-86056/2022

DATE OF HEARING: 11/05/2022
DATE OF DECISION: 09/11/2022

PER: C J MATHEW

The dispute in this appeal of M/s Lenovo India Pvt Ltd is about the intent of customs authorities to deny them the benefit of exemption from additional duties of customs beyond 6%, accorded to 'hard disk drives' in notification no. 6/2006-CE dated 1st March 2006 (at serial no. 17) and notification no. 12/2012-CE dated 18th March 2012 (at serial no. 255), by adoption of tariff item 8471 7030 of First Schedule to Customs Tariff Act, 1975 on import of 'external/portable hard disk drive' of several makes and models effected by them between March 2011 and March 2013 to substitute for claim of coverage by the description corresponding to tariff item 8471 7020 of First Schedule to Customs Tariff Act, 1975. Impugned before us is order-in-original no. PR.CC-DS/10/2015-16 Adj (I)ACC dated 31st October 2015 of Principal Commissioner of Customs, Air Cargo Complex (Import), Mumbai confirming differential duty of

₹14,02,637 on imports effected through Air Cargo Complex (ACC), Mumbai, Air Cargo Complex (ACC), Delhi, Air Cargo Complex (ACC), Chennai and Inland Container Depot (ICD), Whitefield, Bangalore during the period of dispute.

2. According to Learned Counsel for appellant, eligibility for the said exemption has been decided by the Tribunal in several disputes of which that in *Commissioner of Customs, New Delhi v. Supertron Electronics P Ltd [2017 (357) ELT 401 (Tri-Del)]* has been affirmed by the Hon'ble Supreme Court in dismissing the appeal of Revenue. Additionally, Learned Counsel drew attention to the decisions of the Tribunal in *Sony India Pvt Ltd v. Commissioner of Customs, New Delhi [2018-TIOL-1445-CESTAT-DEL]*, in *Commissioner of Customs (Airport & Cargo), Chennai v. Fortune Marketing Pvt Ltd [final order no. 41862/2017 dated 24th August 2017 disposing of appeal no. C/41608/2014 against order-in-appeal no. 466/2014 dated 17th March 2014 of Commissioner of Customs (Appeals), Chennai]*, in *Redington (India) Ltd v. Commissioner of Customs (Import) ACC, Mumbai [2017-TIOL-1993-CESTAT-MUM]*, in *Manoj Gupta v. Commissioner of Customs (Import), ACC, Mumbai [2017 (355) ELT 302 (Tri-Mumbai)]* and in *Neotric Informatique Ltd v. Commissioner of Customs (Import), Mumbai [final order no. A/85477/2019 dated 12th March 2019 disposing of appeal no. C/86574/2015 against order-in-original no. CC-RS/05/2014-15-ACC (Adj) (I) dated 29th April 2015 of*

Commissioner of Customs (Import), Air Cargo Complex, Mumbai]. Prima facie, it would appear that the issue stands settled in view of these several decisions. The nature of the product involved in those disputes are 'external hard disc drives' and the said orders have held that these are the same as 'hard disk drives' which, indisputably, is entitled to the benefit of the exemption notification. Primarily, reliance has been placed on the opinion of the Government of India in the Department of Electronics and Information Technology (DEITY) communicated in letter dated 5th June 2013.

3. This has been fiercely contested by Learned Authorised Representative with the submission that the facts and circumstances germane to the impugned imports vary from that in the cited decisions, that the principle of *res judicata* is not applicable to tax matters as held by the Hon'ble Supreme Court in *Radhasoami Satsang v. Commissioner of Income Tax [(1992) 193 ITR 321]* and that, in the several decisions cited, the reliance placed by the Tribunal upon the expert opinion is improper.

4. According to Learned Authorized Representative, Revenue is not prepared to accept the authority of the communication of Government of India in the letter opining the lack of distinction between the impugned goods and the goods incorporated in the notification. It would appear that Learned Authorized Representative

perceives adversarial engagement within the government as national necessity with the formations of the Central Board of Indirect Taxes & Customs (CBIC) standing in the vanguard to fend off any attempt of other arms of the very same government to intrude into the fiscal arena. We may, at the cost of tedium, reiterate that the State does not exist to collect taxes even if the State is sustained by the treasury; tax is, not too uncommonly, an instrument of policy – social, distributive, diplomatic or trade – of the State and it is not of essence that presence of tax administration in policy deliberation alone itself confer it with sanctity; after all, the head of the finance administration is undeniably privy to policy formulations. Indeed, the argument advanced by Learned Authorized Representative is detrimental to rule of law. More so, as he finds no contradiction in citing the speech of the Hon'ble Finance Minister while presenting the Budget of 2002-03 for the Government of India of which all departments are very much a part. It would not be appropriate for us to dwell on the branch arguments of Learned Authorized Representative arising therefrom.

5. The challenge to settled law by relying on the decision of the Hon'ble Supreme Court in *re Radhasaomi Satsang* does not, to us, appear to be correct insofar as commodity tax is concerned. Assessment to duties of customs are a function of rate of duty and value; the former is determined from the First Schedule to Customs Tariff Act, 1975. The design of the Schedule encompassing all

products within the tariff enumeration does not offer scope for traversing beyond the ninety eight chapters making it evident that certainty of fitment is one of the characteristics of classification for smooth operation of international trade. Discriminatory treatment compelled by whims of incumbents in office, obsessive antipathy to tax concessions, persistent refusal to acknowledge judicial authority for classification or conviction that escapement from tax can only emanate from patronage offered by revenue administration is anathema to seamless international trade. Consequently, settled classification may be unsettled only by argument of inapplicability owing to distinguishable nature of the product. Such argument has not been put forth in the contentions of Learned Authorized Representative.

6. By casting aspersions on the relevance of the opinion of the Expert Committee which has been relied upon in the decisions of the Tribunal, Learned Authorized Representative is urging that we discard judicial discipline and disagree with the decisions of coordinate benches of the Tribunal. We do not believe that there is sufficient force in the arguments advanced by Revenue to take that direction.

7. In *re Supertron Electronics P Ltd,* it has been held that

> *'4……. We have also examined the samples of impugned goods as well as sample of removeable or exchangeable disk drive during the course of hearing. We note that the*

classification of external hard disk drive assumes significance because of concessional rate of duty available to only hard disk drive not to removeable or exchangeable disk drives. The Revenue considers the imported items under 8471 70 30 whereas the impugned order by the Commissioner (Appeals) held the product under Heading 8471 70 20. The latter entry is eligible for concessional CV duty. We have examined the impugned order and grounds of appeal closely. First of all, we note that the exemption specifies tariff heading up to six digits only, 8471 70, which covers both, hard disk drive and removeable or exchangeable disk drives. Further, the next column of the table for description explain the goods only as hard disk drive among many other items. On careful consideration of the technical specification furnished, and the sample of imported items along with tariff entries and the exemption notification, we are in agreement with the findings in the impugned order. The terms hard disk drive used in the notification has not been amplified either by adding "external" or "internal". On this simple premise alone, exemption to the said item cannot be denied. Admittedly, the imported items are hard disk drive are meant for external use with computer or lap-top as plug-in device. They are portable hard disk drive. The contention of the Revenue that they are only removable or exchangeable disk drive, is not factually or technically correct. We have perused sample of such removeable or exchangeable disk drives. They have full drive mechanism in which storage media is inserted and along with such media can be removed and inserted in computer for usage. We have also perused the technical literature of the manufacturer of the impugned goods. Further, the technical opinion given by the Ministry of Communication and Information Technology, is directly on the issue. We find that in the appeal, the Revenue contested the factual findings in the impugned order. Guided by the expert opinion of the

concerned Ministry and facts recorded in the impugned order, we do not find it fit to interfere with the impugned order.'

8. In the light of this categorical finding, judicial propriety requires non-discriminatory application of classification so held and notwithstanding the continuing cavil of Revenue about the eligibility for concessional duty. Needless to state, the Central Government, the fount of policy formulation, does not appear to entertain such doubt about the judicial interpretation of executive intent; it is the foregoing of revenue and not the principle espoused in the said exemption notification that engenders the contrarian approach on the part of the tax collector and that is not an acceptable argument to unsettle settled law.

9. Appeals allowed and impugned order set aside.

(Order pronounced in the open court on 09/11/2022)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*