

CASE NO.:
Appeal (civil) 2321 of 2007

PETITIONER:
Commr. Of Customs, Bangalore

RESPONDENT:
M/s ACER India Pvt. Ltd

DATE OF JUDGMENT: 12/10/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

1. Revenue is in appeal before us aggrieved by and dissatisfied with a judgment and order dated 13.09.2006 passed by the Customs Excise & Service Tax Appellate Tribunal, South Zone Bench at Bangalore in Appeal No. C/135 of 2005 dismissing an appeal upon an order dated 28.12.2004 by the Commissioner of Customs (Appeals), Bangalore.

2. The question which falls for our consideration herein is as to whether notebook computers (laptop computers) are \023CPU with monitor, mouse and keyboard imported together as a set\024 classified under Sl. No. 2 of the Table in Rule 2 of the Computers (Additional Duty) Rules, 2004 and in terms whereof the said goods would be subjected to an additional duty of 7%.

3. Respondent herein imported some laptop computers. Excise duty is payable thereupon. Relying on or on the basis of the purported Entry under Tariff Item No. 8471 read with Section 33 of the Customs Tariff Act, the Assessing Authority held that additional tax was imposable thereupon.

4. An order of the Assessing Authority to the said extent has been set aside by the Commissioner (Appeals). The appeal filed by the Revenue before the Tribunal, as noticed hereinbefore, has been dismissed.

5. Mr. Mohan Parasaran, learned Additional Solicitor General appearing on behalf of the appellant, in support of this appeal, inter alia would submit that the Tribunal committed an error insofar as it failed to take into consideration that the goods in question would not come within the purview of the said Rules. It was urged that Entry 8471 of the Tariff framed in terms of the Customs Tariff Act encompasses within its fold desktops and laptops. A laptop being a computer which has all the attributes of desktop is amenable to excise duty.

6. Mr. M.P. Devanath, learned counsel appearing on behalf of the respondents, on the other hand, would submit that desktops and laptops are known differently in the market. In any event, having regard to the object and purport of the levy of additional duty, a CPU with its accessories in a set does not answer the description of a laptop or a notebook. Our attention in this behalf has been drawn to some literature.

7. The Customs Tariff Act was enacted to consolidate and amend the law relating to Customs Duties. Section 3 of the Act provides for levy of additional duty equal to excise duty; sub-sections (3) and (4) whereof read as under:

\023(3) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or not] such additional duty as would counter-balance the excise duty leviable on any raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of such article, it may, by notification in the Official Gazette, direct that such imported

article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf.

(4) In making any rules for the purposes of sub-section (3), the Central Government shall have regard to the average quantum of the excise duty payable on the raw materials, components or ingredients used in the production or manufacture of such like article.\024

8. The purpose of levying an additional duty is absolutely clear and unambiguous. It is to protect the domestic manufacturers. It provides for a level playing field. Entry 8471 of Chapter 84 of the Schedule appended to the said Act inter alia provides for \021automatic data processing machines and units thereof. The relevant entries are as under:

\0238471 30

-

Portable digital automatic data processing machines, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display:

8471 30 10

Personal computer

8471 30 90

Other

-

Other digital automatic data processing machines:

8471 41

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Comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined :

8471 41 10

Micro computer

8471 41 20

Large or main frame computer

8471 41 90

Other

8471 49 00

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Other, presented in the form of systems

8471 50 00

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Digital processing units other than those of sub-headings 8471 41 or 8471 49, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units

8471 60

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Input or output units, whether or not
containing storage units in the same
housing:

8471 60 10

Combined input or out put units

8471 60 30

Monitor

8471 60 40

Keyboard

8471 60 50

Scanners

8471 60 60

Mouse

8471 60 90

Other\024

9. The Central Government in exercise of the powers conferred upon it by Sub-section (3) read with Sub-section (4) of Section 3 of the Customs Tariff Act made rules known as Computers (Additional Duty) Rules, 2004, Rule 2 whereof reads as under:

\0232. Levy of additional duty.- The Central Government, having regard to the average quantum of duty of excise leviable under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), on monitor, motherboard, key board, mouse, and other parts and components used in the manufacture of the computers which are exempt from whole of the duty of excise leviable thereon under the First Schedule to the said Central Excise Tariff Act, specifies that the additional duty leviable under sub-section (3) of section 3 of the said Customs Tariff Act shall be equal to the rates specified in column (3) of the Table below in respect of the goods, when imported into India, specified in corresponding entry in column (2) of the said Table and falling within heading 8471 of the First Schedule to the said Customs Tariff Act, namely:-

Table

S.No.

Description of goods

Additional
duty rate

(1)

(2)

(3)

1.

Central processing unit (CPU)

6% ad

valorem

2.

CPU with monitor, mouse and key board, imported together as a set; but not including CPU imported separately and input or output devices or accessories such as monitor, key board, mouse, modem, uninterrupted power supply system or web camera

imported separately.

7% ad

valorem

Explanation .- For the purpose of this notification, \023computer\024 shall include central processing unit (CPU) imported separately; or CPU with monitor, mouse and key board, imported together as a set; but shall not include input or output devices or accessories such as monitor, key board, mouse, modem, uninterrupted power supply system or web camera imported separately.\024

10. A bare perusal of the aforementioned provision would clearly go to show that levy of 7% ad valorem additional duty is provided having regard to the average quantum of duty of excise leviable under the First Schedule to the Central Excise Tariff Act on monitor, motherboard, key board, mouse and other parts and components used in the manufacture of the computers.

11. The traditional desktops, computers and monitors are known differently in commercial parlance. A desktop computer is a combination of a CPU with monitor, mouse and key board imported together as a set. What is, thus, covered by the above is a set of items brought together and capable of being put together to make a computer. A notebook computer, on the other hand, comes in an integrated and inseparable form. It is, as such, not a combination of CPU, Monitor, mouse and key board. A set although in view of the dictionary meaning may mean a complete apparatus but it should consist of more than one item, each complementing the work of another and retaining their individual identity all the time. Whereas a desktop computer comprising of a CPU with all the aforementioned accessories do not lose its individual identities and not only are marketable as separate items but are also used separately, a laptop computer cannot be said to be a set of the said parts.

12. Furthermore, what would be the method of determination of duty when the goods imported consisted of set of articles is contained in Section 19 of the Customs Act which reads, thus:

\023Section 19 - Determination of duty where goods consist of articles liable to different rates of duty Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows :\027

(a) articles liable to duty with reference to quantity shall be chargeable to that duty ;

(b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates ;

(c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b) :

Provided that,\027

(a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;

(b) if the importer produces evidence to the satisfaction of the proper officer regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.\024

13. The learned counsel for the parties have placed before us specifications of the types of computers imported by the respondent in order to show that they are known differently. Laptop is defined in Wikipedia as under:

\023A laptop computer, or simply laptop (also

notebook computer or notebook), is a small mobile computer, which usually weighs 2.2-18 pounds (1-6 kilograms), depending on size, materials, and other factors.

Laptops usually run on a single main battery or from an external AC/DC adapter which can charge the battery while also supplying power to the computer itself. Many computers also have a 3volt cell to run the clock and other processes in the event of a power failure.

As personal computers, laptops are capable of the same tasks as a desktop computer, although they are typically less powerful for the same price.

They contain components that are similar to their desktop counterparts and perform the same functions, but are miniaturized and optimized for mobile use and efficient power consumption.

Laptops usually have liquid crystal displays and most of them use different memory modules for their random access memory (RAM), for instance, SO-DIMM in lieu of the larger DIMMs. In

addition to a built-in keyboard, they may utilize a touchpad (also known as a trackpad) or a pointing stick for input, though an external keyboard or mouse can usually be attached.\024

14. The learned Additional Solicitor General would submit that the said description of a laptop would clearly go to show that for the purpose of classification there is not much difference between a laptop and a desktop. From Wikipedia itself, it appears that a desktop computer is described as under:

\023A desktop computer is a computer made for use on a desk in an office or home and is distinguished from portable computers such as laptops or PDAs.

Desktop computers are also known as microcomputers. There are four types of desktop computers: home computers, or personal computers; workstations, Internet servers, and special communications computers.

Desktops are currently the most affordable computers and ubiquitous in businesses, schools, and households; they are used for performing office tasks, organizing digital photos, video editing, and Internet access. Nearly all desktop computers are modular, with components that can easily be replaced or upgraded.

Desktop computers come in a variety of case styles ranging from large vertical towers to small form factor models that can be tucked behind an LCD monitor.

Desktop computers are commonly connected to a power strip.\024

15. From what has been noticed hereinbefore, it would appear that a micro computer is also known as a desktop computer. Micro computer is specifically mentioned in Entry 8471 41 10 as an item separate to the other items. Entry 8471 30 0, however, speaks of personal computer. We have noticed hereinbefore, that monitor, key boards, scanners, mouse, etc. have been classified separately.

16. It is, thus, evident that in common parlance a desktop or a micro computer is different from a laptop or PDA. The distinction between a laptop and a desktop computer would further be evident from the history of Wikipedia wherein inter alia it is stated:

Laptops' upgradeability is severely limited, both for technical and economic reasons. As of 2006, there is no industry-wide standard form factor for laptops. Each major laptop vendor pursues its own proprietary design and construction, with the result that laptops are difficult to upgrade and exhibit high repair costs. With few exceptions, laptop components can rarely be swapped between laptops of competing manufacturers, or even between laptops from the different product-lines of the same manufacturer. Standard feature peripherals (such as audio, video, USB, 1394, WiFi, Bluetooth) are generally integrated on the main PCB (motherboard), and thus upgrades often require using external ports, card slots, or wireless peripherals. Other components, such as RAM modules, hard drives, and batteries are typically user-upgradeable.

Many laptops have removable CPUs, although support for other CPUs is restricted to the specific models supported by the laptop motherboard. The socketed CPUs are perhaps for the manufacturer's convenience, rather than the end-user, as few manufacturers try new CPUs in last year's laptop model with an eye toward selling upgrades rather than new laptops. In many other laptops, the CPU is soldered and non-replaceable. [7]

Many laptops also include an internal MiniPCI slot, often occupied by a WiFi or Bluetooth card, but as with the CPU, the internal slot is often restricted in the range of cards that can be installed. The widespread adoption of USB mitigates I/O connectivity to a great degree, although the user must carry the USB peripheral as a separate item.

NVidia and ATI have proposed a standardized interface for laptop GPU upgrades (such as an MXM), but again, choices are limited compared to the desktop PCIe/AGP after-market.

17. We have referred to wikipedia, as the learned counsel for the parties relied thereupon. It is an online encyclopaedia and information can be entered therein by any person and as such it may not be authentic.

However, it is not disputed that a laptop and a desktop is differently known in commercial parlance.

Furthermore, we are required to determine this issue on interpretation of the relevant entries contained in the schedule of Customs Tariff Act.

18. We, therefore, are of the opinion that the Tribunal cannot be said to have committed any error in opining:

Hence the two items are totally different though capable of performing same or similar functions, but one cannot be mistaken for the other

19. We may notice that a learned Single Judge of the Bombay High Court in *Godrej Soaps Private Limited v. A.K. Bandyopadhyay and others* [1981 ELT 555 (Bom.)] in a case involving import of animal compound feed consisting of several ingredients held as under:

12. Now Section 19 of the Customs Act speaks of a case where goods consist of "set of articles". In the present case, the goods viz. the animal compound feed does not consist of a set of articles for, as stated above, there is only one identifiable article viz. animal compound feed. In order to attract the provisions of Section 19 there must be a

collection of articles or otherwise there must be a collection or aggregation of two or more individual and severally identifiable articles, which is not the case here. In the present case, the goods are made up of several ingredients, which have all lost their identities and have become inseparable even by common processes, and have in fact emerged as a single marketable product. Section 19 of the Customs Act has, therefore, no application whatsoever, and if this is the position, then there is no question of holding that it comes within the compass of Item No. 19 of the Indian Customs and Central Excise Tariff.

13. I may here add that in interpreting Section 19 of the Customs Act along with Item No. 19 of the Indian Customs and Central Excise Tariff, the Respondents pressed into service the two notifications referred to in the impugned orders and it was strenuously contended by the Respondents that on construing these notifications, it must be held that the goods in question were covered under Section 19 of the Customs Act and came within the scope of Item No. 19 of the Indian Customs and Central Excise Tariff. Ordinarily, I would have dealt with this argument of the Respondents in detail, but Mr. Taraporwala, the learned Counsel for the Petitioners pointed out that the said notifications applied to Item No. 21 of the Indian Customs and Central Excise Tariff and the language thereof could not be stretched to interpret either Section 19 of the Customs Act or Item No. 19 of the Indian Customs and Central Excise Tariff. Mr. Taraporwala's contention was and is in order and I accept the same. In view of this, it is not necessary for me to deal with the said argument.\024

20. We, therefore, are of the opinion that a laptop or a notebook being an integrated item cannot be said to be a set of a CPU with monitor, mouse and key board.

21. Furthermore, the Computers (Additional Duty) Rules, 2004 is a taxing statute. It required to be construed strictly. [See Manish Maheshwari v. Asstt. Commissioner of Income Tax and Anr. 2007 (3) SCALE 627 and Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector and E.T.I.O. and Ors., 2007 (7) SCALE 392]. So construed, we are of the opinion, that the interpretation by the Tribunal is in consonance with the aforementioned rules of interpretation.

22. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. No costs.