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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SURYA KANT; J., VIKRAM NATH; J.
17.01.2023

CIVIL APPEAL NO 5373 OF 2019 **Hewlett Packard India Sales Pvt. Ltd. (Now HP India Sales Pvt. Ltd.** *versus***Commissioner of Customs (Import), Nhava Sheva**

CIVIL APPEAL NO 6715 OF 2019 **Lenevo (India) Pvt. Ltd.** *versus* **Commissioner of Customs (Import), Nhava Sheva**

Wikipedia - Adjudicating authorities especially Commissioner of Customs (Appeal) extensively referred to online sources such as Wikipedia to support their conclusion - While we expressly acknowledge the utility of these platforms which provide free access to knowledge across the globe, but we must also sound a note of caution against using such sources for legal dispute resolution - These sources, despite being a treasure trove of knowledge, are based on a crowd-sourced and user-generated editing model that is not completely dependable in terms of academic veracity and can promote misleading information - The courts and adjudicating authorities should rather make an endeavor to persuade the counsels to place reliance on more reliable and authentic sources. *Referred to Commissioner of Customs, Bangalore v Acer India (P) Ltd. (2008) 1 SCC 382. (Para 14)*

Central Excise Tariff Act, 1985 - Since the customs authorities wanted to classify the goods differently, the burden of proof to showcase the same was on them. *(Para 23)*

Central Excise Tariff Act, 1985 - Classification of Automatic Data Processing Machines - Portable - Weight cannot be the sole factor to determine the factum of portability. Instead, the essential ingredients to logically establish whether an ADP is 'portable' are (1) their ability to be carried around easily which includes all aspects such as weight and their dimensions- In appropriate cases, this assessment would also take into consideration the necessary accessories which are required for safe and efficient usage such as mounted stands or any power adapters (1) the ADP must be suitable for daily transit of a consumer and would include aspects such as durability to withstand frequent commute and damage protection - The Concerned Goods are not portable for the reasons (1) the diagonal dimension of the Concerned Goods being minimum of the length of 18.5 inches and the same needs to be transported along with the power cable as well as the applicable stand in most cases if it is to be mounted and (2) there being no protective case designed by the markets for daily transport for these Concerned Goods. Such requirements make the Concerned Goods unable to be carried around easily during daily transit.

For Appellant(s) Mr. V. Lakshmikumaran, Adv. Ms. Charanya Lakshmikumaran, AOR Mr. Aaditya Bhattacharya, Adv. Ms. Apeksha Mehta, Adv. Ms. Ishita Mathur, Adv.

J U D G M E N T

Surya Kant, J.

1. The question that arises for our consideration pertains to correct classification of Automatic Data Processing Machines (hereinafter, 'ADP') which are popularly

known as 'All-in-One Integrated Desktop Computer' (hereinafter, 'Concerned Goods') under the First Schedule to the Central Excise Tariff Act, 1985 (hereinafter, 'First Schedule').

FACTS

2. The Appellants imported certain units of the Concerned Goods and classified them under 'Tariff Item 8471 50 00' as per the prevalent self-assessment procedure. During subsequent examination by the Custom Authorities, the Concerned Goods were classified under 'Tariff Item 8471 30 10', which was later confirmed by the Assistant Commissioner of Customs and Commissioner of Customs (Appeal). These findings were further affirmed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter, 'CESTAT'), West Zonal Bench, Mumbai vide the impugned judgments dated 19.12.2018 and 24.06.2019.

3. While the rate of duty is same under both the Tariff Items, the method of computing them is different. Goods under 'Tariff Item 8471 30 10' attract the application of Section 4A of Central Excise Act, 1944, which valued the excisable goods on the basis of percentage of retail sale price. In contrast, a classification under 'Tariff Item 8471 50 00 ' invites valuation based on price mechanism under Section 4 of Central Excise Act, 1944 which would have effectively reduced the overall liability to pay the requisite duty. This difference in liability is the precise reason behind the present dispute regarding classification under the correct Tariff Item which calls for adjudication.

4. Before delving into the reasoning of the revenue authorities and CESTAT, which is more or less identical, it would be appropriate to reproduce the following relevant parts of the First Schedule :-

Heading / Sub-Heading / Tariff Item[1] (1)	**Description of goods[2] (2)**
8471	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included
8471 30	**- Portable digital automatic data processing machines, weighing not**

[1] Additional Notes to The Customs Tariff Act 1975, sch 1 states that -
1(a) "Heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number.
(b)"Sub-heading" ", in respect of goods, means a description in list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number.
(c)"Tariff Item" means a description in list of tariff provisions accompanied by a sixdigit number means a description of goods in the list of tariff provisions accompanying either eight-digit number and the rate of the duty of excise or eightdigit number with blank in the column of the rate of duty.

[2] General Explanatory Notes to The Customs Tariff Act 1975, sch 1 states that -
1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "--", the said article or group of articles shall be taken to be a subclassification of the immediately preceding description of the article or group of articles which has "-". Where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".

	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 automatic data processing machines
8471 41	-- 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	-- Other, presented in the form of systems
8471 50 00	- Processing units other than those of subheading 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

(Emphasis Applied)

5. Since, the reasoning confirming the classification under 'Tariff Item 8471 30 10' by the adjudicating authorities including CESTAT is identical, hence, it would be sufficient to discuss the key findings of the impugned decisions in brevity. These observations are:-

a) The Concerned Goods weighed less than 10 kilogram and were easily carried from one place to another. In this respect the CESTAT relied on dictionary meaning of the word 'portable' to hold that the goods were rightly classified under 'Tariff Item 8471 30 10";

b) The absence of in-built power source does not render the Concerned Goods as non-portable;

c) The dimensions of the Concerned Goods as well as the fact that it was not foldable did not impact the element of portability;

d) The Concerned goods had a display unit, a touch screen which could function as a keyboard and thus it fulfilled the description mentioned under 'Tariff Item 8471 30 10'.

B. CONTENTIONS

6. We have heard learned counsel for the parties and perused the documents produced on record. It must be noted that both sides have not disputed the findings of the adjudicating authorities except in respect of the aspect of portability of Concerned Goods. Hence, the only limited question that falls for consideration before us in these proceedings is whether the Concerned Goods are 'portable' or not under 'Tariff Item 8471 30 10'.

7. Mr. V Lakshmikumaran, learned counsel for the Appellants, has made four key contentions. *Firstly*, that 'Tariff Item 8471 30 10' pertains to class of ADPs which are popularly known as laptops or notebooks. He has highlighted that the classification under 'Tariff Item 8471 30 10' involves an element of 'functionality' which is not applicable in the present case as Concerned Goods are not capable of functioning without an external source of power. *Secondly,* he contended that Concerned Goods

have been wrongly held to be 'portable' by the CESTAT on the sole aspect that their weight was less than 10 kilograms. He argued that mere weight cannot be the sole consideration for deciding whether any good is 'portable' or not, and it is necessary to consider additional aspects such as functionality and ease of transportability which is suitable for a mobile lifestyle of the user. *Thirdly,* he urged that the CESTAT erroneously relied on the general definition of 'portable' given in dictionaries and instead the same should have been defined in relation to the class of goods, i.e. ADPs. In this respect, he pointed out that the relevant 'Sub-Heading 8471 30' which entails the condition of being 'portable' in the description of goods was preceded by a single '-' and consequently all the goods under the said sub-heading should be taken as a sub classification of the goods covered by the 'Heading 8471'. *Finally,* to buttress the aforementioned arguments, he highlighted that the Concerned Goods are not considered as 'portable' by the European Commission's classification and are also not covered by the 'Tariff Item 8471 30 10 ' as per the World Customs Organization's Harmonized System Explanatory Notes (hereinafter, 'HSN'). We must also bring to the fore and appreciate the efforts of learned counsel for the Appellants who physically demonstrated by setting up one of the sample units of the Concerned Goods to showcase the aspects of portability involved in present matter.

8. On the contrary, Mr. Arjit Prasad, learned senior counsel for the Respondent while supporting the observations in the impugned decisions, put forth two counter arguments. *Firstly*, that since the word 'portable' is nowhere defined in the statute, it should be interpreted on the principle of general parlance. In other words, he submitted that the dictionary meaning of the word 'portable' is sufficient to resolve the dispute regarding its interpretation. *Secondly*, he maintained that the legislature's intention was crystal clear in qualifying the term 'portable' by providing the condition in the description that any ADP less than 10Kgs would automatically become portable. In furtherance of this argument, he relied on the Constitution Bench decision of this Court in ***Mathuram Agrawal v. State of MP***[3] to urge that the intention of the legislature has to be discerned from the plain and unambiguous meaning of the language used in a taxation statute and any other interpretation is impermissible.

9. We now examine these contentions of both parties.

ANALYSIS

10. Before we ponder over the question whether the Concerned Goods are 'portable' or not, it would be appropriate to highlight their key characteristics which are as follows :-

a) The central processing unit is embedded within the display unit;

b) The display unit is generally a touch screen which can be used as an input unit also, such as in the capacity of a keyboard or a mouse;

c) The units generally come along with in-built speakers as well as ports for further connectivity including a port for establishing links with internet network;

d) The diagonal length of the display is at the minimum of 18.5 inches. It may be clarified that presently certain models of the Concerned Goods even exceed this

[3] *Mathuram Agrawal v State of MP* (1999) 8 SCC 667, para 12.

aspect by having the display's diagonal length as wide as 25 inches while still being weighed under 10 kilograms;[4]

e) It needs a constant source of external power source to function;

f) It is non-foldable and cannot be carried around in the usual laptop bags because of its dimensions;

g) The Concerned Goods for efficient functioning need to remain in a vertical state and to be tethered to a stand which is provided along with it or requires support of something else such as a wall. It must be noted that the user guides brought on record in respect of one of the models of the Concerned Goods indicate that any other method of usage including horizontal use was harmful and could cause damage to the Concerned Goods.

11. The first aspect which we will address is with respect to the issue of constant source of power and whether the same is a necessary characteristic to treat goods as 'portable'. In this respect, the Appellants argued that 'Tariff Item 8471 30 10' is only applicable to laptops/notebooks and that the applicable sub-heading HSN indicated this. The relevant part of the same reads as follows –

"Subheading 8471.30

This subheading covers portable automatic data processing machines weighing not more than 10 kg. These machines, which are equipped with a flat screen, may be capable of operating without an external source of electric power and often have a modem or other means for establishing a link with a network."

(Emphasis Applied)

12. While it appears well settled that the HSN is to be normally taken as a safe guide for classifying goods under the First Schedule because it is based on an internationally recognized 'harmonized nomenclature'[5], a bare reading of the explanatory note applicable to the sub-heading clearly lays out the fact that there is no mandatory condition for being operable without any external source of power. We are thus unable to agree with the Appellants that only ADPs with a built-in power source is necessarily required to be classified under 'Tariff Item 8471 30 10'. In other words, no element of 'functionality' is contemplated for the purpose of classifying the Concerned Goods as 'portable'.

13. The second aspect deals with the question as to whether mere factum of weighing less than 10 kilograms would be sufficient to classify the Concerned Goods as 'portable' or not. In this respect, it may be seen that the CESTAT vide its impugned order(s) has relied on the dictionary meaning which defined 'portable' as - "*that can be easily carried and not permanently fixed in a place*". It then went on to conclude that the dimensions of the Concerned Goods were not a concern as long as it could be easily lifted and moved. As noted above, a similar argument has been raised by learned senior counsel for the Respondent before us also.

14. At the outset, we must note that the adjudicating authorities while coming to their respective conclusions, especially the Commissioner of Customs (Appeal) have extensively referred to online sources such as Wikipedia to support their conclusion.

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[4] It must be noted that in respect of current market trends, generally the largest display for laptops/notebooks is around 17 inches.

[5] *Collector of Central Excise, Shillong v Wood Craft Products Limited* (1995) 3 SCC 454.

While we expressly acknowledge the utility of these platforms which provide free access to knowledge across the globe, but we must also sound a note of caution against using such sources for legal dispute resolution. We say so for the reason that these sources, despite being a treasure trove of knowledge, are based on a crowd-sourced and user-generated editing model that is not completely dependable in terms of academic veracity and can promote misleading information as has been noted by this court on previous occasions also.[6] The courts and adjudicating authorities should rather make an endeavor to persuade the counsels to place reliance on more reliable and authentic sources.

15. Moving forward, we must now address the issue at hand, namely, the interpretation of the word 'portable' and more so when the reasoning of the CESTAT solely hinges on the aspect of weight. Such an approach is apparently erroneous because despite the fact that the 'portable' was not defined under the statute, it was incorporated in 'Sub-Heading 8471 30' and was preceded by a single '-', which meant that classification of goods under the same would be taken as a subclassification of the 'Heading 8471'.

16. In other words, 'portable' should have been defined in reference to the ADPs instead of relying on dictionary meaning which contains all kinds of hues of associated meanings as held by this Court in ***CCE v Krishna Carbon Paper Co.***[7]**.** The cited decision also explains the correct approach to be taken in case when a word is to be defined in context of any entry under the First Schedule. It thus holds that :–

"10. The trade meaning is one which is prevalent in that particular trade where the goods is known or traded. <u>If special type of goods is subject-matter of a fiscal entry then that entry must be understood in the context of that particular trade, bearing in mind that particular word.</u> Where, however, there is no evidence either way then the definition given and the meaning following (*sic* flowing) from particular statute at particular time would be the decisive test."[8]

(Emphasis Applied)

17. In our considered opinion, the word 'portable' should have been interpreted in the context of ADPs. In this regard, relevant technical and commercial literature has been perused by us. On a minute analysis thereof, we deem it appropriate to extract the following relevant material:-

<u>The Institute of Electrical and Electronics Engineers</u> defines 'portable computer' as -

"A personal computer that is designed and configured to permit transportation as a piece of handheld luggage"[9]

<u>The Dictionary of Computer and Internet Terms</u> defines it as **"able to be carried around. A portable computer is larger than a laptop computer, but is still easily movable"**[10]

<u>The Oxford Dictionary of Computer Science</u> defines 'portable' in respect of computers as -

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[6] *Commissioner of Customs, Bangalore v Acer India (P) Ltd.* (2008) 1 SCC 382, para 17.

[7] *CCE v Krishna Carbon Paper Co.* (1989) 1 SCC 150, para 6.

[8] ibid, para 10.

[9] The Institute of Electrical and Electronics Engineers, *IEEE Standard Computer Dictionary* (1990) 155.

[10] Douglas A. Downing and others, *Dictionary of Computer and Internet Terms* (10th edn, Barron's Educational Series 2009) 374.

"A computer that can be simply carried from one place to another by one person. They cannot necessarily be used in transit. Examples include laptop computers."[11]

The Microsoft Computer Dictionary also provides a definition along with an illustrative chart depicting various types of 'portable computers' –

"Any computer designed to be moved easily. Portable computers can be characterized by size and weight."[12]

Type	Approximate weight	Power source	Comments
Transportable	**15–30 lb.**	**House current**	**Sometimes called luggable; usually has floppy and hard drives; standard CRT screen.**
Laptop	**8–15 lb.**	**House current or batteries**	**Can be held on the lap; usually has a floppy drive; uses flat LCD or plasma screen.**
Ultralight	**2–8 lb.**	**Batteries or transformer pack**	**Easy to carry in a briefcase; sometimes uses RAM drive or EPROM instead of floppy or hard drive; thinner models are known as notebook computers.**
Handheld	**Less than 2 lb.**	**Batteries or transformer pack**	**Also called palmtop or palmsized; can be held in one hand.**

18. On a conjoint reading of the relevant material and inputs, it is explicitly clear that weight cannot be the sole factor to determine the factum of portability. Instead, the essential ingredients to logically establish whether an ADP is 'portable' are twofold. The first ingredient is their ability to be carried around easily which includes all aspects such as weight and their dimensions. We must hasten to add that in appropriate cases, this assessment would also take into consideration the necessary accessories which are required for safe and efficient usage such as mounted stands or any power adapters. The second ingredient is that the ADP must be suitable for daily transit of a consumer and would include aspects such as durability to withstand frequent commute and damage protection. An example of the same would be the availability of protection cases which allows users to carry the ADPs in hand or possibility of carrying the same in normal briefcases or shoulder bags.

19. On applying these core ingredients to the characteristics of Concerned Goods, there is no room to doubt that they are not 'portable'. *Firstly,* the dimensions of the Concerned Goods make it illogical and unviable for daily transit. While it is true that classification of the goods must not be usually made on the advertisement material of the manufacturer, the user guides produced before us showcase that placing the product in other than the specified orientation could lead to damage to the Concerned Goods. The user guides also emphatically highlight that the Concerned Goods were meant to be used at a fixed place and contained specifications that made them ideal for being mounted on a wall.

[11] Andrew Butterfield and Gerard Ekembe Ngondi (eds), *Oxford Dictionary of Computer Science* (7 th edn, OUP 2016).

[12] Alex Blanton (ed), *Microsoft Computer Dictionary* (5 th edn, 2002) 412-413.

20. *Secondly*, the inability of the consumer to carry these goods around in the absence of any protective case or any covering bags, which makes the Concerned Goods vulnerable to damage during transit. As noted in the literature relied upon before us, the weight was not the sole consideration for being considered as 'portable'. For example, there used to be computers which are now no longer in common use which were popularly known as 'luggable'. They used to weigh more than 10 kilograms. These old predecessors of laptops were designed at the relevant time to be portable and used to fold up neatly in one box with a handle. Despite their weight and the size comparable to small suitcase, they could still be transported, albeit without a wagon.

21. Furthermore, we must also use this opportunity to highlight the impact of technological advancement on law. It's a matter of fact that at the time when the relevant entries of the First Schedule came into effect, weight was definitely an important criterion for deciding whether any ADPs was 'portable'. Scientific progress has greatly reduced the weight associated with high performance in the context of ADPs. It is not surprising that the advent of LED technology, faster microchips, etc. has made it possible for mobile phones to have performance specifications which merely a decade ago was possible only on high end laptops. We must therefore be cognizant of such an impact on the consumer's understanding of any good or trade.

22. Keeping in view the applicable understanding of the element of 'portable' as understood in common parlance used in the trade of ADPs, we must hold that the Concerned Goods are not portable for the reasons that- *Firstly*, the diagonal dimension of the Concerned Goods being minimum of the length of 18.5 inches and the same needs to be transported along with the power cable as well as the applicable stand in most cases if it is to be mounted and; *secondly* there being no protective case designed by the markets for daily transport for these Concerned Goods. Such requirements make the Concerned Goods unable to be carried around easily during daily transit. We, thus, hold that the Concerned Goods are not 'portable'.

23. It goes without saying that since the customs authorities wanted to classify the goods differently, the burden of proof to showcase the same was on them, which they failed to discharge.[13] Hence under the prevalent self-assessment procedure, the classification submitted by the Appellants must be accepted.

CONCLUSION

24. In light of the abovementioned discussion, we allow the appeals and set aside the impugned orders which classified the Concerned Goods under 'Tariff Item 8471 30 10'. It is directed that valuation of the Concerned Goods for levy of the duty be determined under the initially declared 'Tariff Item 8471 50 00'. All necessary consequences shall follow.

25. The appeals are disposed of along with any pending applications in the above terms.

[13] *Dabur India Ltd. v CCE, Jamshedpur* (2005) 4 SCC 9.