CCE, AURANGABAD

v.

M/S VIDEOCON INDUSTRIES LTD. THR. ITS DIRECTOR

(Civil Appeal No. 5622 of 2009)

MARCH 29, 2023

[S. RAVINDRA BHAT* AND DIPANKAR DATTA, JJ.]

Customs Tariff Act, 1975 – First Schedule – Chapter 90 – LCD panels – Classification of – CESTAT held that the LCD panels imported by assesses were classifiable in Chapter Heading 9013.8010 of the First Schedule to the 1975 Act – Held: Reasoning and conclusion of CESTAT that the LCD sets were classifiable under Chapter 90, Entry 9013.8010, is sound and unexceptionable.

Customs Tariff Act, 1975 – First Schedule – Section XVI, XVII – Chapters 85 and 90 – General Interpretive Rules and Notes – Plea of revenue that by virtue of Note 2 (b) to Chapter 85, the goods are to be classified based on their principal or sole use – Held: Revenue's argument jumps over interpretive instructions – In the present case, Note 1 (m) along with the General Note 3 (a) [of the General Rules of Interpretation] that headings that are specifically provided should be preferred over the general ones, is decisive – Thus, the aforesaid contention of revenue is insubstantial because of the clear mandate of Note 1 (m) to Chapter 85 which excludes Chapter 90 goods (which includes LCD panels) – When goods are excluded from a particular chapter, the "pull in" through a note has to be narrowly construed, as otherwise, the basis of exclusion would be defeated, and the earlier note (of exclusion) rendered redundant – Secure Meters case is decisive on the question that LCDs are not articles provided "more specifically in other headings", i.e., other than 90.13 – Furthermore, the fact that LCDs could be used for purposes other than television sets or audio sets is also concluded because in the said decision its use in meters was in issue – Tax/Taxation.

* Author

Dismissing the appeals, the Court

HELD:

1.1 On a reading of the General Interpretive rules and the notes to the concerned chapters (85 and 90, in the present case), it is evident that: (a) classification has to be in accord with "the terms of the headings and any relative Section or Chapter Notes" (Note 1) (b) *Reference in a heading to "an article" includes "that article incomplete or unfinished"* provided, such incomplete or unfinished article has *"the essential character of the complete or finished article."* [Note 2(a)] (c) If on an application of Rule 2(a), an article is classifiable in more than one heading *"the heading which provides the most specific description shall be preferred to headings providing a more general description."* [Note 3 (a)] [Para 22]

1.2 Note 1 (m) to Chapter 85 excludes "(m) Articles of Chapter 90…" The revenue relies on Note 2 (b) to Chapter 85, which says "other parts and accessories, *"if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading"* and then enumerates heading 9013, to say that Chapter 85 would cover the present case. The difficulty in accepting the revenue's argument, in this case, is that it jumps over interpretive instructions. One, General Note (1) states that classification has to be in consonance with terms and headings in chapter notes. Two, Rule 3 (a) categorically enjoins that in regard to classification, the heading providing for a *"more"* specific description prevails over the general one. Three, Note 1 (m) – in Chapter 85 *excludes the* application of articles falling in Chapter 90. In this court's opinion, this note, along with the General Note 3 (a) [of the General Rules of Interpretation] that headings that are specifically provided, should be preferred over the general ones, is decisive. Thus, the revenue's contention that by virtue of Note 2 (b) to Chapter 85, the goods are to be classified based on their principal or sole use is insubstantial because of the clear mandate of Note 1 (m), which excludes Chapter 90 goods (which includes LCD

panels). More importantly, Note 2 opens with the expression "subject to Note 1". This subordinates the entire subject matter in Note 2; it is only where the article is a "part" which acts as an accessory, that the enumerated portions of Chapter 85 come into play. Such an interpretation is plainly untenable. [Paras 23, 25]

Commissioner of Central Excise, Delhi-III v. UNI Products India Ltd. **(2020) 19 SCC 742 : [2020] 13 SCR 295 – relied on.**

1.3 When goods are excluded from a particular chapter, the "pull in" through a note has to be narrowly construed, as otherwise, the basis of exclusion would be defeated, and the earlier note (of exclusion) rendered redundant. Finally, *Secure Meters* is decisive on the question that LCDs are not articles provided "more specifically in other headings", i.e., other than 90.13. Furthermore, the fact that LCDs could be used for purposes other than television sets or audio sets is also concluded because, in that decision, its use in meters was in issue. [Para 28]

Secure Meters v Commissioner of Customs **(2015) 14 SCC 239 : [2015] 6 SCR 219;** *Collector of Central Excise v Delton Cables Ltd. & Anr.* **(2005) 12 SCC 284;** *Commissioner of Central Excise, Delhi-III vs. UNI Products India Ltd.* **(2020) 19 SCC 742 : [2020] 13 SCR 295;** *M/S Intel Design Systems (India) (P) Ltd. vs. Commissioner of Customs and Central Excise* **(2008) 3 SCC 258 : [2008] 2 SCR 686 – relied on.**

G. S. Auto International Ltd. v. Collector of Central Excise **2003 (152) ELT 3 (SC) : [2003] 1 SCR 372 – referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5622 of 2009.

From the Judgment and Order dated 23.02.2009 of the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai in Appeal No.C/591/08-Mum in Order No.A/46/09/CSTB/C-II.

With

Civil Appeal No. 8026 of 2022.

N. Venkataraman, ASG, Mukesh Kumar Maroria, V. C. Bharathi, Ms. Nisha Bagchi, Mohd. Akhil, Udai Khanna, Bhuvan Kapoor, Ms. Alka Agarwal, Advs. for the Appellant.

Vivek Kohli, Sr. Adv., Rajat Bose, Ankit Sachdeva, S. S. Shroff, V. Lakshmikumaran, Ms. Apeksha Mehta, Ms. Falguni Gupta, Ms. Neha Choudhary, Pranav Mundra, Ms. Charanya Lakshmikumaran, Advs. for the Respondent.

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.

1. These appeals, by the revenue, challenge two orders by the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT' hereafter).

2. In the first appeal[1], the assessee is M/s Videocon International (hereafter "Videocon"). CESTAT, by its impugned order[2] in the first appeal, allowed Videocon's appeal and held that the LCD panels imported by it are classifiable Chapter Heading ("CH") 9013.8010 [of the First Schedule to the Customs Tariff Act, 1975 (hereafter "CTA")], as Liquid Crystal Devices- as opposed to the revenue's stand, that they are classifiable as 85.29 *"parts of goods falling under heading 85.28"* [television sets falling in heading 85.28]. Videocon manufactures TV sets; the LCD panels are used by it, along with other items, such as printed boards, decoders, etc.

3. In the second appeal,[3] the revenue is aggrieved by order of the CESTAT[4] whereby import of LCD panels by the assessee i.e., M/S Harman International (India) Pvt. Ltd., (hereafter "Harman") was held to be classifiable under CH 9013.8010, rejecting the revenue's contention that they were classifiable as "Car Audio or Video Players" under either CTH 8519 or 8555. The LCD panels, in this case, were used as part of audio systems in automobiles.

1 CA 5622/2009
2 Dated 06.01.2009 in Order No. A/46/09/CSTB/C-II
3 CA 8026/2022
4 Dated 09.11.2021 in Order No. A/87132/2021 in Customs Appeal No. 85003/2019

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Brief facts

4. In both appeals, the assesses had imported LCD panels/display boards. In Videocon appeal, Videocon claimed that the imported goods fell in the relevant entry in CH 9013.8010. That entry reads as follows:

   "9013.8010 Liquid crystal devices (LCD)"

   The Chapter Heading read as follows:

   "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"

   Whereas, the revenue contended that the LCD panels were to be classified as CH 8529, which reads as follows:

   "Chapter 8529. "Parts suitable for use solely or principally with the apparatus of heading 8525 to 8528"

   CH 8528 reads as follows:

   "8528 Monitors and projectors, not incorporating Television reception apparatus, reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus"

5. The revenue claimed that the goods were improperly classified; a show cause notice was issued. The Deputy Commissioner, who adjudicated them, ruled against the assessee and held that the goods were classifiable under CH 8529. 9090. The assessee's appeal succeeded, and the Commissioner directed a remand. The Dy. Commissioner, after remand, confirmed the show cause notice, and affirmed the classification proposed by it; the assessee appealed against this order, unsuccessfully. The Commissioner (Appeals) rejected its appeal. It, therefore, approached the CESTAT, which by the impugned order, set aside the demand, and upheld the assessee's plea that the proper classification of the goods was in CH 9013.8010.

6. In the Harman appeal too, the assessee claimed that the imported items i.e., LCD panels [declared before the customs authorities as

"Liquid Crystal Devices-TFT-LCD 4.8 in"] for car audio assemblies, were properly classifiable in CH 9013.8010. Its contention was rejected by the revenue authorities, who classified it as "*Sound Recording or Reproducing Apparatus"* in CH 8519, and fell in CH 8522, item 8522.9000. CH 8522 reads as follows:

"8522 Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 or 8521"

The litigation history in Harman's case followed a trajectory similar to Videocon's; ultimately, by the impugned order, CESTAT upheld its contention that the goods, meant for use in car audio systems, were classifiable in CH 9013.8010.

Contention of parties

7. Ms. Nisha Bagchi, learned counsel appearing for the revenue, argued that the findings of the CESTAT are erroneous. She argued that the literature and other documents reveal that the LCD panels have specific model numbers. She pointed to the fact that the websites of the manufacturers of the imported articles are meant for use in LCD TVs. It was undeniable that the imported items were used in the manufacture of LCD TVs. Some, however, were used in manufacturing monitors, though they were not sold in the market. Therefore, the goods were LCD devices principally used in the manufacture of LCD TVs. LCD TV is an apparatus covered specifically under heading 85.25 & 85.28.

8. Counsel argued that heading 90.13 covers only those articles which are not provided for more specifically in other headings. In the present case, LCDs are specifically mentioned as parts of LCD TVs in heading 85.29. Therefore, they cannot be classified under heading 90.13. Reliance was placed on *G.S. Auto International Ltd v Collector of Central Excise*[5]. It was emphasized that in *G.S. Auto* (supra), this court held that the true test for classification is the test of commercial identity and not functional test. Therefore, the correct question is how the articles are referred to in the market by

5 [2003] 1 S.C.R. 372: 2003 (152) ELT 3 (SC)

those who deal with them, whether for purchase, sale or otherwise. The commercial parlance test, therefore, is determinative. Counsel submitted that the court in *GS Auto* (supra) referred to Notes 2(b) and (3) of Section XVII and observed that a joint reading of the notes would show that the expression "parts of general use" throughout the schedule, meant, articles of Heading No. 7318 and similar articles of other base metal, and the expression 'part and accessories' in Chapter Heading 87.08 did not apply to parts or accessories unsuitable for use solely or primarily with articles of CH 87.08 which related to parts and accessories of motor vehicles of CH 87.01 to 87.05. For the purposes of classification under CH 87.08, the test to be applied is whether the goods are suitable for use solely or primarily with articles of CH Nos. 87.01 to 87.05; if the answer is in the affirmative, the goods will be classifiable under CH 87.08, but if the answer is in the negative, they would have to be classified under CH 73.18.

9. It is urged that on an application of similar logic even if LCDs are covered by CH 90.13, yet, they have to be classified under heading 85.29 since these are solely or principally used for manufacture of LCD TVs and commercially known as parts of TVs.

10. Learned counsel referred to Chapter Note 2(b) (of Chapter 90) relating to classification of parts and accessories if suitable for use solely or principally with a particular kind of machine, instrument or apparatus or with a number of machines, are to be classified with that machine, instrument or apparatus of that kind. In view of this note, LCDs for computer monitor are classifiable as part of computer monitor, and the various general application and special application monitors will alone be classifiable under Chapter Heading 90.13. The example given for such LCD panels were panel for video games, medical monitoring and industrial test and control, etc., which are not part of any particular equipment or machine but can be used in an assortment of machines. It was submitted that the assessee's plea about classification of different parts in various Chapter Headings other than Chapter 84 and 85, is irrelevant as the various notes/explanatory notes of all sections, chapters, and headings are unique to the respective sections or chapters or headings and cannot be generalized or interchanged

or applied to with other sections, chapters or headings, unless specified in the tariff/explanatory notes or by any other legislation. The absence of explanatory note stating the parts of LCD TVs will not be classifiable under Chapter Heading 85.29 if it is specifically specified under any other chapter heading (in this case, Chapter Heading 90.13), the assessee cannot rely on notes relating to other sections and chapters.

11. Lastly, Ms. Bagchi, anticipating reliance- by the assessee upon the judgment of this court, in *Secure Meters v Commissioner of Customs*6- submitted that the *ratio* of that case cannot be applied to the facts of this case because, firstly, the competing entries (in that case) fell within the same chapter, and secondly, that the factual basis in the present case, is stronger, because the websites of the manufacturers, clearly reveal that the imported goods were meant principally to be used in television sets. Section note 2 (b) applies in this case because the item in question was not specifically classifiable under its headings, *because it is principally meant for use in television sets.*

12. In the second appeal7 concerning import by Harman International, the revenue argues that the items are LCD attached with inseparable PCBs. Both were part of one equipment, though it was declared as LCDs. Counsel pointed out that Harman, in its letter (dated 19.08.2016) stated that it manufactured Car Audio/infotainment items and supplied them to auto manufacturers; the shipment contained LCDs used in its manufacturing process of car audio assembly. Further, it was stated that the items were assembled with the importer's assembled PCBs to give different outputs on car audio screen and was designed specifically to suit end product requirements and could not be used separately as an accessory but was an essential part of its manufactured product. Thus, LCD panels were specifically designed in a particular manner to be used only in car audio/infotainment systems. They were, consequently, specific parts of car audio/infotainment systems and cannot be used otherwise.

6 [2015] 6 S.C.R. 219: 2015 (14) SCC 239
7 CA 8026/2022

13. Counsel urged that the goods were articles described specifically as parts of *'Sound Recording and Reproducing Apparatus'* covered under CTH 8522 and because they are constituting articles described more specifically in other headings, there was no scope of their being covered under CTH 9013 8010. It was urged, that like in Videocon, the manufacturer's literature described the goods specifically as 'LCD Module'.

14. Mr. Vivek Singh, learned Senior counsel (appearing in the Videocon appeal), submitted that the view taken by CESTAT is correct. Goods are admittedly liquid crystal device; they are specifically covered by the entry heading 90.13 as it is not described more specifically in any other heading. The entry referred to by the revenue i.e., Chapter Heading 8529 relates to *parts suitable for use solely or principally* with the parts of heading nos.85.25 to 85.28, which *inter alia* includes LCD TV, cannot be considered as a specific heading.

15. It was argued that Section Note 1(m) to Section XVI clearly excludes articles of Chapter 90. Therefore, first, it has to be specifically held that the LCD panels are not covered by Chapter 90. The revenue does not deny that LCD panels are covered by Chapter Heading 90.13. This heading, according to the revenue, covers only LCD panels meant for general use and are interchangeable and not what are principally meant for use in TVs. It is argued that tariff entry 90.13 refers to LCDs *which do not constitute articles provided for more specifically in other headings.* The entry relied on by the revenue is 8529, which deals with parts suitable for use *"solely or principally with the apparatus"* of Heading 8525 to 8528. This entry is not confined to LCD panels meant for use in TVs only but to several other parts which go into the making of LCD TV like TV tuners, PCB boards, switches, connectors, speakers, etc., all of which will be classifiable under heading 8529. The heading referring to parts cannot be treated as heading covering the LCDs more specifically.

16. It is submitted that the description under heading 8529 is general and not specific, whereas the description under heading 90.13 is more specific. LCDs consist of items like LCD TV, (referred to under Chapter Heading 8528.7218 and 8528.7510) and indicator panels incorporating LCDs

(referred to in entry 8531.2000) and other items which are specifically provided for. The Supreme Court decision in *G.S. Auto* (supra) is in the context of Section XVII where Note 2 and 3 provides:

"2 The expression parts' and 'parts and accessories' do not apply to the following articles, whether or not they are identifiable as for the goods this section:

*(a) ********

(b) Parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39)"

"3. References in Chapters 86 to 88 to parts or accessories do not apply to parts or accessories which are not suitable for use solely or' principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal se of that part of accessory."

17. It was argued that the section notes clearly provide that the word "parts and accessories" *will not apply to parts of general use as defined in Note 2 to Section XV* of base metal, and it was in view of this note that this Court held that parts which are suitable for use solely or principally with articles of Chapters 86 to 88 are to be treated as parts and accessories of articles falling under Chapter 86 to 88 in terms of Note 3. These notes are missing from Section XVI and are, therefore, irrelevant. Chapter notes/section notes and explanatory notes are unique to the respective section, chapters and headings they deal with and cannot be generalized or interchanged. Consequently, classification has reference to section and chapter notes of the section to which the goods belong, i.e., Section XVI. Section Note 2(a) and 2(b) in Section XVI are different from Section Notes of Section XVII. According to Section Note 2(a) of Section XVI the parts which are goods included in any of the headings of Chapter 84 or 85 are, in all cases, to be classified in their respective headings, and it is only when the parts are not classifiable as per Section Note 2(a) that Section Note 2(b) is attracted. Therefore, even though a part is suitable for use or solely with a particular kind of machine finds mention under any headings

in Chapter 84 or 85, it will then get classified under that heading and not as a part of apparatus or a machine.

18. Learned senior counsel relied on the decision of this court in *Secure Meters* (supra) and urged that the distinction sought to be made by the revenue, with this case, is on untenable grounds. It was argued that though the competing entries were in Heading 90, nevertheless, the article was LC Displays, but used in meters. This clearly undermined the revenue's argument that LCD sets were meant principally for TVs. They have multiple uses; if the revenue is correct, each such use would then be a "principal" use. In that event, the Chapter Heading would be rendered redundant.

19. Mr. V. Lakshmikumaran, learned counsel appearing in Harman, adopted the submissions made by Mr. Vivek Singh. He additionally relied on Rule 1 of the General Rules of Interpretation, which provides that:

"Classification of goods in this Schedule shall be governed by the following principles:

The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions."

It was argued that in terms of Rule 1, since classification of a *'Liquid Crystal Device'* is specifically provided for by nomenclature under tariff item 9013 8010, the LCDs imported by the assessee were correctly classifiable under tariff item 9013 8010, in terms of the nomenclature of the item.

20. It was argued that Tariff Item 9013 8010 prescribes a more specific description and is to be preferred over any other heading, whereas tariff heading 8522 provides a general description, as parts and accessories suitable for use, "solely or principally" with the apparatus of CH 8519 or 8521. The further submission of Mr. Laxmikumaran is that the expression "parts and accessories" used in CH 8522 excludes articles covered under Chapter 90 of the Tariff, whether or not they are identifiable as for the goods falling under Section XVI of the Tariff and that even if any article

is identifiable as a "part or/and accessories for the goods of Section XVI, it shall be excluded from the term "parts and accessories". Learned counsel relied upon the judgment reported in *Collector of Central Excise v Delton Cables Ltd & Anr*[8] where, the court dealt with section Notes 2 (a) and 2 (b) to Chapter 85 and held that Note 2 (b) applies only if the item is not specifically classifiable under their respective headings. It was argued, therefore, in the present case, that Note 1 (m) to Chapter 85 specifically excluded from its operation, goods falling in Chapter 90. In such circumstances, LCD panels were complete articles capable of multiple uses, and not solely or principally in some articles. It was additionally urged that the facts found, clearly showed that the PCBs attached to the LCD panels imported by the assessee were meant to act as voltage stabilizers.

The provisions

21. First, it would be necessary to refer to the relevant norms of interpretation under First Schedule of the CTA, i.e. *"The General Rules of Interpretation of this Schedule".* Rules 1, 2 and 3 are relevant and are extracted below:

THE FIRST SCHEDULE—IMPORT TARIFF (See Section 2) GENERAL RULES FOR "THE INTERPRETATION OF THIS SCHEDULE

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article

8 2005 (12) SCC 284

has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or, finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified, as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

Chapter 85 falls in Section XVI, the heading of which reads as follows:

"CHAPTER 85 Machinery and Mechanical Appliances; Electrical Equipment; Parts thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles

NOTE 1. This Chapter does not cover:

(a)xxxxxxxxxxx xxxxxx

(m) Articles of Chapter 90…

xxxxxx xxxxxx xxxxxx

1. *Subject to Note 1 to this Section, Note 1 to Chapter 84 and to 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, 8485, 8503, 8522, 8529, 8538, and 8548) are in all cases to be classified in their respective headings;*

   (b) *other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517*

   (c) *all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that in heading 8485 or 8548"*

Chapter Heading 90, which falls in Section XVII, reads as follows:

"CHAPTER 90

"Optical, Photographic, Cinematographic, Measuring, Checking,

Precision, Medical or Surgical Instruments and Apparatus; Parts and Accessories Thereof"

Note 2 to Chapter 90 reads as follows:

2. Subject to Note 1 above, parts and accessories for machines, apparatus, instruments or articles of this Chapter are to be classified according to the following rules:

(a) Parts and accessories which are goods included in any of the headings of this Chapter or of Chapter 84, 85 or 91 (other than heading 4[8487], 8548 or 9033) are in all cases to be classified in their respective headings;

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;

(c) All other parts and accessories are to be classified in heading 9033."

Analysis and Conclusions

22. On a reading of the General Interpretive rules and the notes to the concerned chapters (85 and 90, in the present case), it is evident that:

(a) classification has to be in accord with "the terms of the headings and any relative Section or Chapter Notes" (Note 1)

(b) *Reference in a heading to "an article"* includes *"that article incomplete or unfinished"* provided, such incomplete or unfinished article has *"the essential character of the complete or finished article."* [Note 2(a)]

(c) If on an application of Rule 2(a), an article is classifiable in more than one heading *"the heading which provides the most specific description shall be preferred to headings providing a more general description."* [Note 3 (a)]

23. Note 1 (m) to Chapter 85 excludes *"(m) Articles of Chapter 90…"* The revenue relies on Note 2 (b) to Chapter 85, which says "other parts and accessories, *"if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading"* and then enumerates heading 9013, to say that Chapter 85 would cover the present case.

24. The correct manner of interpreting the notes, chapters, and the General rules of interpretation was explained by this court, in *Commissioner of Central Excise, Nagpur v Simplex Mills Co. Ltd.,*[9] where the Court held that the Rules for the Interpretation of the Schedule to the CET Act are framed pursuant to the powers under Section 2 of that Act. The court observed:

"The Rules for the Interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. According to Rule 1 titles of sections and chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification 'shall be determined according to the terms of the headings and any relevant section or chapter notes'. If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule 1 gives primacy to the section and chapter notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules. The appellants have relied upon Rule 3. Rule 3 must be understood only in the context of sub-rule (b) of Rule 2 which says inter alia that the classification of goods consisting of more than one material or substance shall be according to the principles contained in Rule 3. Therefore when goods are prima facie, classifiable under two or more headings, classification shall be effected according to sub-rules (a), (b) and (c) of Rule 3 and in that order."

9 [2005] 2 S.C.R. 441: (2005) 3 SCC 51

25. The difficulty in accepting the revenue's argument, in this case, is that it jumps over interpretive instructions. One, General Note (1) states that classification has to be in consonance with terms and headings in chapter notes. Two, Rule 3 (a) categorically enjoins that in regard to classification, the heading providing for a *"more"* specific description prevails over the general one. Three, Note 1 (m) – in Chapter 85 *excludes the* application of articles falling in Chapter 90. In this court's opinion, this note, along with the General Note 3 (a) [of the General Rules of Interpretation] that headings that are specifically provided, should be preferred over the general ones, is decisive. Thus, the revenue's contention that by virtue of Note 2 (b) to Chapter 85, the goods are to be classified based on their principal or sole use is insubstantial because of the clear mandate of Note 1 (m), which excludes Chapter 90 goods (which includes LCD panels). More importantly, Note 2 opens with the expression "subject to Note 1". This subordinates the entire subject matter in Note 2; it is only where the article is a "part" which acts as an accessory, that the enumerated portions of Chapter 85 come into play. Such an interpretation is plainly untenable. In *Commissioner of Central Excise, Delhi-III vs. UNI Products India Ltd.,*[10] this court had to consider whether "car matting" fell within Chapter 57 of the I Schedule to the CET Act *per* heading "Carpets and Other Textile Floor Coverings" or were to be classified under Chapter 87, as "vehicles other than railway or tramway rolling-stock and parts and accessories thereof". The court held that the item fell within the description "car matting":

"25. We do not find any error in such reasoning. Chapter 87 of the Central Excise Tariff of India does not contain car mats as an independent tariff entry. We have reproduced earlier the various parts and accessories listed against tariff entry 8708. All of them are mechanical components, and revenue want car mats to be included under the residuary sub-head "other" in the same list. The HSN Explanatory Notes dealing with interpretation of the Rules specifically exclude "tufted textile carpets, identifiable for use in motor cars" from 87.08 and place them under heading 57.03. Revenue's argument is

10 [2020] 13 S.C.R. 295: 2020 (19) SCC 742

that the Explanatory Notes have persuasive value only. But the level or quality of such persuasive value is very strong, as observed in the judgments of this Court to which we have already referred. Moreover, the Commissioner himself has referred to the Explanatory Notes in the order- in-original while dealing with the Respondent's stand. Thus, we see no reason as to why we should make a departure from the general trend of taking assistance of these Explanatory Notes to resolve entry related dispute. Now, on referring to these Explanatory Notes, we find that one category of carpets [Textile carpets (Chapter 57)] has been excluded specifically from parts and accessories. In our opinion, the subject-item does not satisfy the third condition specified in Section XVII of the Explanatory Notes in relation to "III-Parts and Accessories". A plain reading of Clause (C) thereof, which we have quoted above, excludes "textile carpets" (Chapter 57).

26. The main argument of the Appellant is that because the car mats are made specifically for cars and are used also in cars, they should be identified as parts and accessories. But if we go by that logic, textile carpets could not have been excluded from Parts and Accessories. We have referred to such exclusion in the preceding paragraph. It has also been urged on behalf of the revenue that these items are not commonly identified as carpets but are different products. The Tribunal on detailed analysis on various entries, Rules and Notes have found they fit the description of goods under chapter heading 570390.90. We accept this finding of the Tribunal. Once the subject goods are found to come within the ambit of that sub-heading, for the sole reason that they are exclusively made for cars and not for "home use" (in broad terms), those goods cannot be transplanted to the residual entry against the heading 8708. As we find the subject-goods come under the chapter-heading 570390.90, and the other entry under the same Chapter forming the subject of dispute in the second order of the Commissioner, in our opinion, there is no necessity to import the "common parlance" test or any other similar device of construction for identifying the position of these goods against the relevant tariff entries."

26. In the decision reported as *Delton Cables Ltd* (supra) too, this court had emphasized on the rule of classification of the goods in accordance with a specific description and observed that:

"3. There appears to be no dispute that were it not for Section Note 2(b), the item in question would be classified under Tariff Heading 85.44 as contended by the appellant. Sections Notes 2(a) and (b) respectively provide as follows:

"2. (a) Parts which are goods included in any of the headings of Chapter 84 or Chapter 85 (other than Headings 84.85 and 85.48) are in all cases to be classified in their respective headings.

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of Heading 84.79 or Heading 85.43) are to be classified with the machines of that kind. However, parts which are equally suitable for use principally with the goods of Headings 85.17 and 85.25 to

85.28 are to be classified in Heading 85.17."

4. It is clear from a reading of the two clauses to the section note that clause

(b) would only apply once it was found that the items in question were not specifically classifiable under their respective headings. As has been clearly said by the Collector (Appeals)

"from the sequence of the paragraphs given under Section Note 2 it is clear that the question of switching over to Section Note 2(b) can arise only after ensuring that the parts are not covered by Section Note 2(b) [sic Section Note 2(a).] which begins with the expression "other parts" meaning thereby that the parts which are not covered by Section Note 2(a) would be considered for coverage by Section Note 2(b). One cannot therefore directly jump over to Section Note 2(b) without exhausting the possibility of Section Note 2(a)."

27. *M/S Intel Design Systems (India) (P) Ltd. vs. Commissioner of Customs and Central Excise*[11] is a decision, where the goods were described as parts of tanks and other armoured and motorized fighting vehicles,

11 [2008] 2 S.C.R. 686: 2008 (3) SCC 258

under Heading 8710 was held to fall within Chapter 85. The reasoning of this court, in that case, was as below:

"4. As per Rule 1 on Interpretive Rules, classification of excisable goods is to be determined according to the terms of the Heading and in terms of Section/Chapter notes. Note 2(f) to Section XVII (which governs Chapter 87) excludes the goods viz. electrical machinery and equipment (Chapter 85). The goods in question i.e. contractors, switches, control box etc. are the goods used for switching, protecting electrical circuits or for making connections to or in electric circuit. These parts/components are specifically covered under CSH 8536.90. The CBEC Circular relied upon by the assessee is not relevant.

5. As per the Explanatory Notes to HSN the parts falling under Chapter Heading 8710 would be covered under the said chapter, provided they fulfill both the conditions i.e. they must be identifiable as being suitable for use solely or principally for such vehicles and that they must not be excluded by the provisions of Notes to Section XVII. The identifiable parts under the said heading bodies of armoured vehicles and parts thereof, cover special road wheels for armoured cars, propulsion wheels for tanks, tracts etc. As per this requirement, the goods should not only be identifiable to be armoured vehicles, but it should so not have been excluded by Notes to Section XVII. The Chapter note 2(f) excludes electrical machinery and equipment falling under Chapter 85. Explanatory Notes to HSN relating to the parts and accessories excluded by Note 2 specify items with reference to specific Chapter Heading as per (7) (a), (k) which excludes photographs and other current collectors for electric traction vehicles, fuses, switches and other electric apparatus of Heading No.85.35 or 85.36. The items, therefore, manufactured by the appellants are identifiable or are in the nature of goods falling under Chapter Heading 85.36. Since these fall under the category of excluded goods under Chapter Notes, even though they are used specifically solely or principally with the armoured vehicles of Chapter Heading 8710, they are classifiable under Chapter Heading 8536.90 only as held by the adjudicating authority."

28. It is, therefore, clear that when goods are excluded from a particular chapter, the "pull in" through a note has to be narrowly construed, as otherwise, the basis of exclusion would be defeated, and the earlier note (of exclusion) rendered redundant. Finally, *Secure Meters* (supra) is decisive on the question that LCDs are not articles provided "more specifically in other headings", i.e., other than 90.13. Furthermore, the fact that LCDs could be used for purposes other than television sets or audio sets is also concluded because, in that decision, its use in meters was in issue. This court held, pertinently, as follows:

"17. 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 "articles" 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 "article" 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 "parts and accessories". 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.

18. 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 "other parts and accessories", 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."

29. In view of the above decisions and the foregoing reasoning, the CESTAT's reasoning and conclusions, in both cases, that the LCD sets were under Chapter 90, Entry 9013.8010, is sound and unexceptionable. Consequently, the appeals have to fail and are dismissed, without order on costs.

Headnotes prepared by: Divya Pandey
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Result of the case: Appeals dismissed.