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C.M.A.1827 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1827 of 2024
and
C.M.P.No.14410 of 2024

M/s.Viewsonic Technologies India Private Limited,
B-8, Khader Nawaz Khan Road,
Nungambakkam,
Chennai,
Tamil Nadu – 600 006.

...Appellant/Petitioner

Vs.

1. The Customs Authority for Advance Rulings,
New Custom House,
Ballard Estate,
Mumbai – 600 006.

2. The Commissioner of Customs,
Chennai – II Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai – 600 001.

... Respondent/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 28KA of the Customs Act, 1962 against the Ruling No.CAAR/Mum/ARC/94/2024 dated 25.06.2024 in Application No.CAAR/CUS/APPL/109/2023-O/o. Commr-CAAR-MUMBAI



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passed by the Customs Authority for Advance Rulings, Mumbai, 1st Respondent

herein.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.S.M.Deenadayalan
Senior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

The Appellant has filed this appeal under Section 28KA of the Customs Act, 1961 against the Impugned Order dated 25.06.2024 passed by the 1st Respondent / Customs Authority for Advance Rulings, Mumbai.

2. The Appellant had proposed to import computer monitors of various modes from its sister concern namely Viewsonic International Corporation, New Taipei City 235 Taiwan, Taiwan.

3. Under these circumstances, the Petitioner had approached the 1st Respondent by filing an application for Advance Ruling under Section 28H of the Customs Act, 1962.



4. By the Impugned Order, the 1st Respondent has concluded that the computer monitors of various modes which the Petitioner proposed to import were classifiable under Heading 8528 52 00 of the Customs Tariff Act, 1975. It now holds that the Appellant will not be eligible for the benefit of exemption under Sl.No.17 to Notification No.24/2005-Cus dated 01.03.2005 as amended by Notification No.67/2016- Cus dated 31.12.2016.

5. Relevant portion of the Impugned Order of the 1st Respondent reads as under:-

“4.4 The representative of the Importer also demonstrated two models of the monitors in the subject applications i.e. XG2431 and VP2468a on April 10, 2024. The demonstration was made to show that the availability of the USB ports does not change the nature of the monitors and further, the subject monitors are functional only by connecting to an Automatic Data Processing machine. Pursuant to the same, the Applicant was directed to submit the functionality of all the ports in the subject monitors. In compliance with the same, the Applicant has spelt out the ports available in the subject monitors and their respective function in their letter dated April 16, 2024. Vide said letter the applicant has informed that these monitors have HDMI Port Mini HDMI Port, Display Port (IN & Out), USB (Type A, B, C). The applicant has not informed about the gaming module and that how the gaming modules are to be connected to the monitors. However, it is observed that connectability to these ports with Non ADP machine is not categorically denied.

7.3 On examining the inclusions and exclusions of features and specifications as stated in para 7.1 with the clarification on



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*technical features as provided in the CBIC Circular no. 33/2007 dated 10.09.2007, I find that broadly the subject goods have the essential characteristics to be classified as computer monitors, except that **the features of HDMI port or speakers, that are present in the subject goods are not specified in the Circular.** In the instant case, however, I agree with the applicant's contention that technology has been ever evolving, and the presence of HDMI port and sound capabilities through speakers does not negate the principal function of the subject goods in determining the classification of the subject goods.*

8.6 I find that as per paragraph 6(D) & 6(E), Monitors, not incorporating television reception apparatus when presented separately cannot be classified under Chapter heading 8471 and have to be classified in the headings appropriate to their respective functions. Accordingly, by virtue of terms of the headings, relative Chapter Notes and HSN Explanatory notes, I find that the subject goods meet essential conditions to merit classification under Chapter sub heading 8528 52 00 as, "Monitors capable of directly connecting to and designed for use with an automatic data processing machine of heading 8471".

*10.2.1. **HDMI:** HDMI provides an interface between any audio/video sources such as Set Top Box, DVD player or AV receiver and audio and or video monitor such as a digital television over a single cable. It allows to send high resolution digital video, theatre quality sounds and device command. Precisely it is used on HD signals for transferring both high definition audio and video over a single cable. It can also support audio return channel which send sounds from TV Tuner to the receiver, in contrast with normal computer cable /port. TV/HDMI ports also enable the TVs to connect the other devices transferring high quality audio and video. It can also connect a gaming device (in fact some models as illustrated*



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above also de-facto gaming devices), home theatre etc. High Definition Multimedia Interface (HDMI) is data transmission standard device that connects a data source such as CPU or a set top box to an output device such as television, projector, desktop monitor, laptop, speakers etc. It provides an interface between any audio Video sources such as set top box, DVD Player or A/V receiver, Audio Video Monitor such as digital television etc.

HDMI is one of the most useful and most common port. The HDMI port can be used for video, audio, computers as well as in Smart TV. The devices that can be associated/connected with these HDMI ports may be as follows:

- i. Modern Game Console
- ii. Media Players
- iii. DVRS
- iv. Sound Systems
- v. Computers
- vi. Streaming Devices

10.3 From the wording used in the Sr. No. 17 of the exemption Notification No. 24/2005- Cus dated 01.03.2005 it is quite clear and unambiguous that only those Computer Monitors qualify for exemption when solely or principally used in an ADP System of heading 8471. Contrarily, in the instant case the subject monitors can also be connected with a number of other electronic devices like modern game console, Media players, DVRS, sound systems, streaming devices etc. along with computers (ADP Machine). HDMI are used both for Video and audio. Streaming device like a ROKU or Amazon Fire TV Stick can be easily plugged in these subject monitors through HDMI ports. Such modern game console, streaming devices etc. cannot be called as an ADP machines or Part of an ADP Machine.

It is further observed that the other ports namely VGA, DVI,



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USB can also be used to connect such monitors to a Non-ADP Machines either.

10.5 I also find that in the case of In Re: Sharp Business System (India) Pvt. Ltd, (Relied upon by the Applicant in the application) reported in 2022 (381) ELT 565 (A.A.R-Cus-Del). the Customs Authority for Advance Rulings. New Delhi while upholding the classification under CTI 85285200 had denied the benefit under Sr. No 17 of Notification No. 24/2005-Cus... as amended on account of features available in the monitors. The applicant failed to substantiate their contention that the various ports available in such monitors (e.g. HDMI) can only be connected to an ADP Machine and not otherwise. Similarly, connectability to these ports with Non-ADP machine is not categorically denied in their port functionality letter dated 16.04.2024. Here, I concur with the views expressed by the Jurisdictional authorities as stated in Para 5.1 (i &?).

10.6 Further some of the monitors for which the advance ruling has been sought appear to be Gaming monitors for better gaming experience. In no way it can be said that it is the intent of the legislature to extend exemption notification benefit to such Gaming Monitors/Consoles and streaming devices etc. which are not an ADP machine.

11. In view of these facts, I find that all the models of computer monitors as detailed in Table-1 of Para-1 and covered under present application are classifiable under CTI 8528 52 00 of the first schedule to the Customs Tariff Act, 1975 however, they would not be eligible to avail benefit of duty exemption under Sr.No.17 of Notification No.24/2005-Customs, dated 01.03.2005 as amended.

12. I rule accordingly.



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6. The specific case of the Appellant is that the computer monitors imported by the Appellant merits classification under Heading 8528 52 00 as they are capable of being directly connected to and as designed principally for use with automatic data processing machine of Heading 8471 which has been accepted by the 1st Respondent / Customs Authority for Advance Rulings.

7. It is submitted that mere presence of High Definition Multimedia Interface (**HDMI**), Video Graphics Array (**VGA**) and Digital Visual Interface (**DVI**) in the monitor *ipso facto* would not mean that the digital monitor that were proposed to be imported by the Petitioner by filing application before the 1st Respondent import exemption under Sl.No.17 to Notification No.24/2005- Cus dated 01.03.2005 as amended by Notification No.67/2016- Cus dated 31.12.2016 was not available to the Appellant.

8. It is submitted that during the course of the proceedings before the 1st Respondent, the Appellant was called upon to furnish the following



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information by the Secretary of the 1st Respondent vide E-Mail dated

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- i. *Whether the models covered (having USB ports) in these 2 application can function by themselves (Standalone basis) or not?*
- ii. *Pl inform how these models are to be connected to the ADPM and details of ADPM thereof?*

9. It is submitted that the 1st Respondent did not call for any explanation before concluding that from the expression used in the Sl. No. 17 to the exemption Notification No. 24/2005- Cus dated 01.03.2005 it is quite clear and unambiguous that only those Computer Monitors qualify for exemption when solely or principally used in an Automatic Data Processing System (ADP System) of heading 8471.

10. The conclusion in the instant case that the subject monitors **can also be connected with a number of other electronic devices like modern game console, Media players, DVRS, sound systems, streaming devices etc. along with computers (ADP Machine). HDMI are used both for Video and audio is irrelevant.**



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11. It is submitted that merely because streaming device like a ROKU or Amazon Fire TV Stick can be easily plugged with the subject monitors through HDMI ports or modern game console can be played or used for streaming etc would not justify a conclusion that the imported monitor cannot be called as a good solely or principally used in an Automatic Data Processing Machines (ADP Machines).

12. The learned counsel for the Appellant would submit that new generation of monitors are manufactured with High Definition Multimedia Interface (**HDMI**), Video Graphics Array (**VGA**) and Digital Visual Interface (**DVI**) etc. Therefore, monitors imported by the Petitioner merits exemption under Sl.No.17 to the exemption Notification No.24/2005-Cus dated 01.03.2005.

13. The learned counsel for the Appellant would also draw attention to the results procured from the google search wherein for a search for “computer monitor”, the results generated online would indicate that the current generation of computer monitors not only have regular port for connecting with printers but also have High Definition Multimedia Interface (**HDMI**), Video Graphics



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Array (VGA) and Digital Visual Interface (DVI) etc.

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14. The learned counsel for the Appellant has also drawn attention to the following case law:-

i. Besix Dabhol S.A. vs. Commissioner of Customs, Pune- I, [2004 (170) E.L.T. 539 (Tri.-Mumbai)];

15. That apart, the learned counsel for the Appellant would submit that though the Appellant had filed the application on 11.08.2023 before the 1st Respondent which has culminated in the Impugned Order dated 25.06.2024 of the 1st Respondent, the Appellant had also made imports under the following Bills of Entries wherein the benefit of Sl.No.17 to Notification No.24/2005-Cus dated 01.03.2005 as amended by Notification No.67/2016- Cus dated 31.12.2016. has been extended to the Appellant:-

<i>Sl.No.</i>	<i>Date</i>	<i>Bill of Entry No.</i>
1.	07.05.2024	3373848
2.	07.05.2024	3373316
3.	07.05.2024	3372760
4.	31.05.2024	3760438



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16. It is further submitted that the 1st Respondent has failed to appreciate that the subject products are connected to Automatic Data Processing Machines through HDMI, VGA and DVI ports. Further the averment that the findings of the 1st Respondent is contradictory and consequently, the denial of the benefit of the exemption notification is neither liable to be interfered nor incorrect.

17. Opposing the prayer, the learned counsel for the Respondent would submit that the Writ Petition is devoid of merits.

18. The learned counsel for the Respondent would specifically draw attention to the decision of the Hon'ble Supreme Court in the case of **Columbia Sportswear Company vs. Director of Income Tax, Bangalore**, (2012) 11 SCC 224. He submits no appeal is maintainable.

19. The learned counsel for the Respondent would submit that only remedy that is available to the Appellant is to file a petition either under Article 226 and/or 227 of the Constitution.

20. The Hon'ble Supreme Court in the case of **Columbia Sportswear Company vs. Director of Income Tax, Bangalore**, (2012) 11 SCC 224, held



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as follows:-

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“22. In this special leave petition, we do not find that a substantial question of general importance arises nor is it shown that a similar question is already pending before this Court for which the petitioner should be permitted to approach this Court directly against the advance ruling of the Authority. We accordingly dispose of this special leave petition granting liberty to the petitioner to move the appropriate High Court under Articles 226 and/or 227 of the Constitution. We request the High Court concerned to ensure that the writ petition, if filed, is heard by the Division Bench hearing income tax matters and we request the Division Bench to hear and dispose of the matter as expeditiously as possible. ”

21. Thus, the learned counsel for the Respondent would submit that the present Civil Miscellaneous Appeal filed under Section 28KA of the Customs Act, 1962 is liable to be dismissed.

22. It is submitted that even if the Writ Petition was filed it was liable to be dismissed as the Impugned Order is not perverse. A reference was made to the decision of the Hon'ble Supreme Court in **V.V.Iyer of Bombay vs. Jasjit Singh, Collector of Customs and Another**, (1973) 1 SCC 148, wherein it was held that only if orders have been passed in violation of principles of natural justice, a Writ Petition was entertainable.



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23. It is further submitted that interference under Article 226 of the Constitution of India is available if only against the decision making process and not *per se* .

24. That apart, the learned counsel for the Respondent would submit that the monitors which are capable of directly connecting to and designed for use with an automatic data processing machine of heading 84.71, are to be classified under sub heading 8528 71 or 8528 72. In this connection, a reference is made to Paragraph 2 of a Circular No.33/2007-Cus dated 10.09.2007.

25. Paragraph 2 of the above said Circular No.33/2007-Cus dated 10.09.2007 reads as under:-

“The issue was examined in the Board. Monitors used along with ADP machines were classified till 31.12.2006, under heading 8471 of the First Schedule to the Customs Tariff Act, 1975. Due to HS 2007 changes brought into effect from 01.01.2007, such monitors are presently classifiable under sub heading 8528 40. All types of monitors and projectors which are solely or principally



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used with an ADP machine is covered under the sub headings 8528 41(Cathode Ray Tube Monitors), 8528 51(Other types) and 8528 61(Projectors) and are extended with exemption of customs duty vide Sl.No.17 of notification No.24/2005-Customs dated 01.03.2005. Further, television or video monitors were classifiable earlier under heading 8528. Presently these monitors used as Television or Video reception apparatus are classified under sub heading 8528 71 or 8528 72 as the case may be, and are not eligible for the aforesaid exemption.”

26. The learned counsel for the Respondent would further submit that in the Impugned Order, the 1st Respondent in Paragraph 8.7 has referred to description of the model in the Appellant's Website.

27. It is submitted that the monitor aids in additional gaming features and therefore the subject products do not satisfy the principal function of delivering the out put from the Automatic Data Processing Machines.

28. We have considered the arguments advanced by the learned counsel for the Petitioner and the learned counsel for the Respondents. We have perused the documents available on records.



29. By amendment to Section 28-KA vide Section 12 of Act 33 of 2021 with retrospective effect from 04.04.2021, Section 28-KA of the Customs Act, 1962 has been amended. By the same amendment, the definition of “Appellate Authority” in Section 28-E(ba) was deleted and the same expression used in Section 28-KA of the Customs Act, 1962 was substituted with the expression “High Court”.

30. Thus, an order of the Authority for Advance Ruling which was earlier appealable before the “Appellate Authority” as defined in Section 28-E(ba) of the Customs Act, 1962 namely the Authority for Advance Rulings constituted under Section 245(O) of the Income Tax Act, 1961, as inserted by Section 64(iii) of the Finance Act, 2018 (Act 13 of 2018) dated 29.03.2018, stood deleted from the statute with retrospective effect from 04.04.2021.

31. Since as per amended Section 28-KA of the Customs Act, 1962 expression “Appellate Authority” stands replaced by and substituted with the expression “High Courts”, only the High Courts have the jurisdiction to entertain an appeal against an Order of the Authority for Advance Ruling under Section 28-I(ii) of the Customs Act, 1962.



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32. Since an Appellate remedy has been now provided to an applicant opting for an Advance Ruling under Section 28-I of the Customs Act, 1962, we are of the view that the present appeal is maintainable. Therefore, we overrule the objection of the learned counsel for the Respondent.

33. As far as the merits are concerned, we are of the view that the Order passed by the 1st Respondent is liable to be interfered with. A reading of the technical literature filed for the monitors, indicates that the monitors can have modern features such as HDMI, VGA and USB etc. The technology has evolved in changing times.

34. As per Circular No.33/2007-Cus dated 10.09.2007, only all types of monitors and projectors which are solely or principally used with an ADP machine is covered under the sub headings 8528 41(Cathode Ray Tube Monitors), 8528 51 (Other types) and 8528 61(Projectors) are exempted from payment of customs duty vide Sl.No.17 of notification No.24/2005-Customs dated 01.03.2005. Only if the monitors are exclusively used for Television/Video reception and are not designed for use with an Automatic Data Processing Machine of Heading 84.71 alone are outside the purview of Sl.No.17 to Notification No.24/2005-Cus. dated 01.03.2005.



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35. As per the technical literature provided by the appellant, the listed models having VGA and / or HDMI connectivity can be classified under 85285200”. Therefore, the imported monitors by the Petitioner are indeed i.e., exclusively or principally used in an Automatic Data Processing System (ADP System) of Heading 8471.

36. Mere presence of High Definition Multimedia Interface (**HDMI**), Video Graphics Array (**VGA**), Digital Visual Interface (**DVI**) and merely because the subject monitor can be connected with other devices *ipso facto* would not render the monitor that was proposed to be imported by the Petitioner not capable of being used with the Automatic Data Processing System (ADP System) of Heading 8471. The imported monitor is classifiable under Tariff Item/Heading 8528 52 00.

37. The expression “principally used” would mean “primarily used”. Merely because the monitor can also be used with other devices would not render a monitor ineligible to the benefit of Notification. The technology has evolved and new generation monitors are being manufactured giving multiple options to its user. Addition of new features, would not *ipso facto* render it



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ineligible for the benefit of the exemption of Sl.No.17 to Notification No.24/2005-Cus dated 01.03.2005. Therefore, the conclusion in the Impugned Order dated 25.06.2024 is unacceptable.

38. That apart, no query was raised from the Petitioner regarding presence of the High Definition Multimedia Interface (**HDMI**), Video Graphics Array (**VGA**) and Digital Visual Interface (**DVI**) before coming to a conclusion after information was gathered from the Petitioner.

39. Application for Advance Ruling was filed by the Petitioner during 11.08.2023. Hearing was held on 31.01.2024. Thereafter, the Impugned Order dated 25.06.2024 was also passed. After the hearing, the Petitioner has also imported similar items under various Bills of Entries as mentioned above.

40. In all these Bills of Entries, the Assessing Officer who is actually concerned with the assessment of the imported monitors has concluded that the Appellant was indeed entitled to the benefit of Sl.No.17 to Notification No.24/2005-Cus dated 01.03.2005 as amended by Notification No.67/2016-Cus dated 31.12.2016.



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41. We are therefore of the view that the Impugned Orders are unsustainable and therefore, warrants an interference. Therefore, the Impugned Orders are liable to be reversed.

42. Under these circumstances, we set aside the Impugned Order and answer the case in favour of the Appellant holding that the Appellant was indeed entitled to the benefit of Sl.No.17 to Notification No.24/2005-Cus dated 01.03.2005 as amended by Notification No.67/2016- Cus dated 31.12.2016 as monitors imported by the Appellant. It is specifically answered that mere presence of the High Definition Multimedia Interface (**HDMI**), Video Graphics Array (**VGA**) and Digital Visual Interface (**DVI**) in the imported monitors would not dis entitle the benefit of Sl.No.17 to Notification No.24/2005-Cus dated 01.03.2005 as amended by Notification No.67/2016-Cus dated 31.12.2016.

43. Civil Miscellaneous Appeal stands disposed of with the above observations. No cost. Consequently, connected Miscellaneous Petition stands closed.

[R.S.K., J.]

[C.S.N., J.]



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Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

1. The Customs Authority for Advance Rulings,
New Custom House,
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Mumbai – 600 006.
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