IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2025

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THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

W.P. No. 35185 of 2024

Commissioner of Customs, Import
Chennai II, Customs House
No.60, Rajaji Salai
Chennai-600001. … Petitioner

-vs-

M/s.Lenovo India Private Ltd.
RBD LEON, Level-2, Doddanekundi Village
Marathalli Outer Ring Road, Marathalli Post
Kr PuramHobli, Bangalore, Karnataka-560037. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to quash the impugned final order CAAR/MUM/ARC/60/2023 dated 05.09.2023 of Customs Authority for Advance Ruling passed in Application CAAR/CUS/APPL/66/2023.

For Petitioner	:	Mr.S.Gurumoorthy
For Respondent	:	Mr.Raghavan Rambadran Mr.S.Ganesh Aravindh

O R D E R

The petitioner has challenged the impugned Advance Ruling Order dated 05.09.2023 holding that the proposed items of import namely, "Interactive Large Format Display – Model Thick Vision T86, T75, T65 (with camera) & T65 (without camera)" is classifiable under the First Schedule to the Customs Tariff Act, 1975.

2. The learned Standing Counsel appearing for the petitioner drew the attention of this Court to Section 28-I of the Customs Act, 1962 and would submit that the *proviso* to sub-section 2 of Section 28-I of the Customs Act, 1962 does not permit the Advance Ruling Authority to entertain any application from the assessee, in cases where the question raised in an application has already been decided by the Appellate Tribunal or any Court.

3. According to the learned Standing Counsel appearing for the petitioner, the goods for which the respondent /assessee had approached the Advance Ruling Authority were already considered by CESTAT, Bombay and CESTAT, Delhi. Therefore, according to the petitioner, there is a statutory prohibition for the Advance Ruling Authority to entertain the request of the respondent/ assessee but by total non-application of mind to the *proviso* to sub-

section 2 of Section 28-I of the Customs Act, 1962, the Advance Ruling Authority has entertained the application of the respondent and passed the impugned order in violation of Section 28-I of the Customs Act, 1962. On the other hand, the learned counsel for the respondent would submit that at the outset, this writ petition is not maintainable. He drew the attention of this Court to Section 28-KA of the Customs Act, 1962, which provides for statutory appeal, if the petitioner is aggrieved by the order of the Advance Ruling Authority.

4. The learned counsel for the respondent would submit that instead of exercising the statutory appeal provided under Section 28-KA of the Customs Act, 1962, the petitioner has approached this Court by filing this writ petition under Section 226 of the Constitution of India, which is not maintainable.

5. In support of the said contention, he also drew the attention of this Court to a decision rendered by a learned Single Judge of this Court dated 22.12.2023 in the case of ***M/s.Isha Exim Versus the Commissioner of Customs*** reported in ***2024 (2) TMI 33***, wherein it has been held in paragraph No.38 of the said decision that the jurisdiction of this Court under Article 226 of the Constitution of India cannot be transformed into an appellate jurisdiction

especially, when there exists an appellate remedy under the Statute under Section 28-KA of the Customs Act, 1962.

6. The learned counsel for the respondent would also submit that only in cases of same goods, the *proviso* to sub-section 2 of Section 28-I of the Customs Act, 1962, which provides for statutory prohibition for the Advance Ruling Authority to entertain the request of the assessee will apply but in the instant case, the learned counsel for the respondent/assessee would submit that the goods in question are similar goods but not same goods. Therefore, according to him, the statutory prohibition provided under Section 28-I of the Customs Act, 1962 will not apply. He would also submit that as per the impugned Advance Ruling order, the period granted for the respondent /assessee is only for a period of three years, which comes to an end on 04.09.2026. Therefore, he would further submit that having not exercised the statutory appellate remedy, the petitioner cannot file this writ petition under Article 226 of the Constitution of India.

7. In support of his contention that in cases of similar goods, the Advance Ruling Authority is empowered to consider the request of the respondent/ assessee, he relied upon the reply sent by the Additional Commissioner of

Customs before the Advance Ruling Authority dated 23.06.2023, wherein it has been categorically stated that the goods in question are not the same goods to attract Section 28-I of the Customs Act, 1962. Therefore, he would submit that when the customs department themselves have admitted that the goods in question are not same goods, which were the subject matter of consideration by the Tribunal, the Advance Ruling Authority was right in entertaining the request of the respondent and was also right in passing the impugned order.

8. Admittedly, the petitioner has not exercised the statutory appellate remedy available to them, if aggrieved by the impugned order of the Advance Ruling Authority. Section 28-KA of the Customs Act, 1962 provides for an appeal as against the order passed by the Advance Ruling Authority. Instead of exercising the statutory right of the appeal, the petitioner has filed this petition. The dispute pertains to classification of goods under the Customs Tariff Act, 1975. It requires complex analysis, which can be agitated only before the appellate authority and not before this Court exercising powers under Article 226 of the Constitution of India.

9. The learned Single Judge of this Court in his decision referred to supra has also held that the writ petition is not maintainable, and if the Customs

Department is aggrieved by the order of the Advance Ruling Authority only a statutory appeal is maintainable as provided under Section 28-KA of the Customs Act, 1962.

10. This Court is in agreement with the view taken by the learned Single Judge of this Court. The learned counsel for the respondent has also brought to the notice of this Court to the reply dated 23.06.2023 sent by the Additional Commissioner of Customs before the Advance Ruling Authority, wherein he has stated that the goods in question are not the same goods, which were the subject matter of consideration by the Tribunal and therefore, the *proviso* to sub-section 2 of Section 28-I of the Customs Act, 1962 does not get attracted. Despite the said stand taken by the Additional Commissioner of Customs through his reply dated 23.06.2023 before the Advance Ruling Authority, the petitioner has chosen to file this writ petition aggrieved by the order of the Advance Ruling Authority. Instead of filing the statutory appeal if aggrieved by the order of the Advance Ruling Authority, which has held that the goods in question are not the same goods, which were the subject matter of consideration by the Tribunal, the petitioner has filed this writ petition which is not maintainable due to the reasons stated supra. It is also to be noted that the impugned Advance Ruling order is valid only upto September 2026 in

accordance with Section 28-J of the Customs Act, 1962.

11.After giving due consideration to the aforementioned factors, this Court is of the considered view that this writ petition does not deserve any merit. Accordingly, this writ petition is dismissed. No costs.

27.06.2025

Index: Yes/No
Internet: Yes/No
Speaking /Non-speaking order
NCC : Yes / No

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ABDUL QUDDHOSE, J.

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Dated : 27.06.2025