

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

**WEST ZONAL BENCH**

**CUSTOMS APPEAL NO: 85830 OF 2024**

[Arising out of Order-in-Original No: 244/2023-24/Commr/NS-V/CAC/JNCH dated 27th February, 2024 passed by the Commissioner of Customs, (NS-V), Nhava Sheva.]

**HP India Sales Pvt Ltd**

No.24, Salarpuria Arena, Hosur Main Road  
Adugodi, Bengaluru – 560030

*... Appellant*

*versus*

**Commissioner of Customs (NS-V)**

Jawaharlal Nehru Customs House, Nhava Sheva  
Tal: Uran, Dist: Raigad - 400707

*...Respondent*

**APPEARANCE:**

Shri T Vishwanathan, Ms Anjali Hirawat and Shri Bharat Menon, Advocates for the appellant

Shri K Jain, Special Counsel for the respondent

**CORAM:**

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

**HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDER NO: 87016/2025**

DATE OF HEARING:

06/05/2025

DATE OF DECISION:

04/11/2025

**PER: C J MATHEW**

Dauten once said

*'It's called a pen. It's like a printer, hooked straight to my brain.'*

and is a telling observation on prioritized knowledge of the present; that the similarity with, and distinguishment from, 'printer' is necessary to comprehend what a pen does and also that 'printer' could range from the machine presses of Gutenberg to the compact unlikely looking boxes on worktables. Such is the pace of printing technology that this dispute of M/s HP India Sales Ltd but had to be with origin lying in their claim to be liable to duties of customs chargeable on

*'inkjet printer'*

corresponding to tariff item 8443 3250 of First Schedule to Customs Tariff Act, 1975 that came to be substituted, in impugned order<sup>1</sup> of Commissioner of Customs (NS-V), Nhava Sheva, on the finding that

*'inkjet printing machine'*

corresponding to tariff item 8443 3910 of First Schedule to Customs Tariff Act, 1975 is more appropriate description of the impugned goods and consequent recovery of duty of ₹ 14,91,36,350 under section 28 of Customs Act, 1962, along with applicable interest under section 28AA of Customs Act, 1962 on 'HP Latex printers', of varying models valued at ₹ 149,53,77,789 and imported between October 2016 and March

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<sup>1</sup> [order-in-original no. 244/2023-24/Commr/NS-V/CAC/JNCH dated 27<sup>th</sup> February 2024]

2021, that were held as liable to confiscation under section 111(m) of Customs Act, 1962 but offered for redemption under section 125 of Customs Act, 1962 on payment of fine of ₹ 15,00,00,000 while imposing penalty of ₹ 14,91,36,350 under section 114A of Customs Act, 1962.

2. It is of interest to note that there is no dispute that the impugned goods are covered by

*'Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof'*

corresponding to heading 8443 of First Schedule to Customs Tariff Act, 1975 and we do not need to concern ourselves with the first sub-classification except to observe that the traditional printing presses fall therein. Both the rival tariff lines in the dispute lie within the second of the three sub-classifications, viz.,

*'Other printers, copying machines and facsimile machines, whether or not combined'*

below which is a tariff line pertaining to combined or composite function machines in addition to two further sub-classifications, viz.,

*'Other, capable of connecting to an automatic data processing machine or to a network'*

corresponding to sub-heading 8443 32 of First Schedule to Customs

Tariff Act, 1975 and

*'Other'*

corresponding to sub-heading 8443 39 of First Schedule to Customs Tariff Act, 1975. The demarcation is, thus, unimpeachably about being 'capable of connection to an automatic data processing machine or network' and places 'standalone' photocopying machines outside qualification or distinction. The rival contentions are also centred thereupon.

3. Learned Counsel for appellant contended that the features and technical description of HP Latex 300 Printer series leaves no room for doubt about being capable of connection to a computer or network; this, he argued, was in conformity with declaration filed with US Customs at the time of import as also several other countries. By way of further evidence, he relied upon the *Explanatory Notes* for the heading and the sub-classification clusters on source of data as well as memory as option. He contended that

*'Subheadings 8443.31 and 8443.32*

*The criterion "capable of connecting to an automatic data processing machine or to a network" denotes that the apparatus comprises all the components necessary for its connection to a network or an automatic data processing machine to be effected simply by attaching a cable. The capability to accept the addition of a component (e.g., a "card") that would then allow the*

*connection of a cable is not sufficient to meet the terms of the subheadings. Conversely, that the component to which a cable would be connected is present but inaccessible or otherwise unable to effect a connection (e.g., switches must first be set) is not sufficient to exclude goods from these subheadings.'*

in the Subheading Explanatory Notes in the same chapter emphasizes the conformity claimed by them.

4. Learned Counsel further relied on circular<sup>2</sup> of Central Board of Excise & Customs (CBEC), placing the issue in perspective thus

*'2.....Prior to implementation of HS 2007 changes, the classification of printers was under sub-heading 8471 60 if these were capable of connecting to a central processing unit and able to accept/deliver data in the form used by the ADP system, as an output of the ADP. However, inkjet printing machines, other than those as above classifiable under Heading 8471 were separately classified under sub-heading 8443 51. Subsequently, the classification of Printers was revised to HS 2007 and grouped under single heading 8443.....*

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*..These printers do not have an in-built ADP machine and cannot do any processing by themselves and do not have any independent function sans the use of a computer...The Large Format Printers are connectible to an ADP machine or to a network by simply attaching a cable and thus satisfy the conditions of connectability enumerated in the explanatory notes.'*

as supporting their claim. He placed reliance on the decisions of the

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<sup>2</sup> [circular no. 11/2008-Cus dated 1<sup>st</sup> July 2008]

Tribunal in *Aztec Fluids and Machinery Pvt Ltd v. Commissioner of Customs, Ahmedabad* [2023 (11) TMI 175 – CESTAT AHMEDABAD], in *Monotech Systems Ltd v. Commissioner of Customs, Nhava Sheva* [2022 (6) TMI 320 – CESTAT MUMBAI] and in *Hewlett Packard India Sales (P) Ltd v. Commissioner of Customs (Imports), ACC, Mumbai* [2018 (4) TMI 1345 – CESTAT MUMBAI] in support thereof besides two US Cross Rulings<sup>3</sup>.

5. Learned Special Counsel contended that the customs authorities had concluded that the printers had software installed on them as also input device and processor which was not controverted by the appellant. He pointed out that it is clear from the Explanatory Notes that the claimed tariff line is intended for printers that are entirely dependent on an automatic data processing machine as is evident from the circular *supra*. He also urged us not to accept the argument relating to ‘RIP software’ as the functionality thereof was to obtain bitmap and the outside hardware is only for processing the software in the printer.

6. The primary contention of the appellant is that the impugned goods are enabled to connect to automatic data processing machine or network and that binding precedent in decisions of the Tribunal have settled the classification in their favour. It is their claim that ‘E-box’ in the printer is neither ‘automatic data processing’ machine nor alternative for it and the

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<sup>3</sup> [N044487 dated 2<sup>nd</sup> December 2008 and N0300064 dated 13<sup>th</sup> September 2008]

installed software merely enables communication with external 'automatic data processing' machine with no capability of directly executing print except through command from 'automatic data processing' machine. On the other hand, the argument in support of the impugned order is that impugned goods are self-contained hardware capable of functioning without connecting to an external source. It must be noted that a printer prints and placing emphasis on the source of material to be printed is to turn the principles of classification on its head. Neither do the impugned tariff lines nor the notes in relevant chapter or section of the First Schedule to Customs Tariff Act, 1975 incorporate any expressions or conditions respectively that permit 'capable of being' to be interpreted as referring to source of material.

7. Confronting us is an issue that requires resolution between two sub-headings within which are found the rival tariff lines with the apparently significant delineation between 'printer' and 'printing machine' that happen to bear 'inkjet' technology with the corresponding parents distinguished by 'capable of connecting..' in one; as the rival tariff lines do no lie within the same sub-heading and considering that the same sub-classification govern both, viz., printers other than the traditional mode, bringing both within the same group, it is 'capable of connecting....' on which our attention is focused. It would appear that an apparent distinction between 'printer' and 'printing machine' is nomenclature legacy of mere archival

significance. Before the amendment<sup>4</sup>, ‘inkjet printer’ was treated as ‘input or output units’ of ‘automatic data processing’ machines against tariff item 8471 6027 of First Schedule to Customs Tariff Act, 1975 obviating the need for the qualification that is now attached while ‘ink-jet printing machines’ always remained in one heading which grouped different types of printers but at sub-heading level, all of itself among the printing technology of earlier years, as description corresponding to tariff item 8443 5100 of First Schedule to Customs Tariff Act, 1975. There, doubtlessly, is some convergence at some level as far as classification of equipment for printing is concerned but it is on the distinction that this dispute has been erected and, all the more so, from intent of the government to accord discriminatory tax treatment. If the proposition made on behalf of the importer is admitted, it would imply that every kind of printer of today would fall within the more favoured description leaving the rival description redundant. Before addressing the core of the dispute, it would be appropriate to ascertain judicial determination that is claimed to have resolved the issue.

8. Reference to their own dispute of yesteryear, in *re Hewlett Packard India Sales (P) Ltd*, draws forth the wisdom of *Explanatory Notes* to the Harmonized System of Nomenclature (HSN) as irrefutable tool in assisting classification but for ‘inkjet printer’ in an entirely different context and significantly different contour of dispute. The

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<sup>4</sup> [HS 2007]

decision in *re Monotech Systems Ltd* at Mumbai merely followed that decided upon in Chennai which relied upon the *Explanatory Notes* to the Harmonized System of Nomenclature, circular of Central Board of Excise & Customs (CBEC) as well as the factual finding that prompted the first appellate authority in a different dispute over identical product to determine classification claimed at time of import. The decision in *re Aztec Fluids and Machinery Pvt Ltd* follows the order in *re Monotech Systems Ltd* and on the limited finding that imported goods receive data through USB port. Yet another resolution of dispute over ‘printers’ and, once again, in *Monotech Systems Limited v. Commissioner of Customs, Chennai*, and *vice versa* in cross-appeal, by the Tribunal was highlighted in support of submissions but, imported with ‘automatic data processing’ machine in semi-assembled condition, is hardly of assistance in proffering binding precedent. The decisions cited do not offer any significant similarity other than beyond the periphery of the dispute.

9. No tariff line in the First Schedule to Customs Act, 1975 is redundant and the distinction between the two rival headings is circumscribed within the qualification attached to one subheading. Language can only be so precise and that very frailty is, often, cause of misconstruing and conceptual commotion in colloquial usage. Capable is often misunderstood to mean compatibility whereas it is an expression of appreciation of ‘ability, fitness or quality to do or achieve a specified thing’; a printer does printing and capability of connecting,

in this context, means capability for printing only by connecting. It does not refer to the automatic data processing machine as source of material for printing but the impossibility of printing on its own without the controlling software residing in an external automatic data processing machine. The use of automatic data processing network for preparation of graphics and materials with storage thereto is akin to 'type setting' or 'photogravure' in the traditional printing systems but does not make it a printer of itself. The sole test is the capacity to print and not by being output for a data processing machine which was its reason for existence elsewhere in the tariff prior to amendment of Harmonized System of Nomenclature (HSN). That is apparent from

*'The criterion "capable of connecting to an automatic data processing machine or to a network" denotes that the apparatus comprises all the components necessary for its connection to a network or an automatic data processing machine to be effected simply by attaching a cable...'*

in *Explanatory Notes* pertaining to subheadings 8443.31 and 8431.32, implying that the expression 'attaching a cable' controls the intent therein, *i.e.*, to be attached as an output for automatic data processing machines or network connected to automatic data processing machines.

10. To that end, we have perused the technical specifications furnished by Learned Counsel for appellant. The printers are intended for commercial use in the printing industry which is evident from the substrate prescribed and the size; width is about seven feet, depth about

three feet and height about six feet and the space as well as safety precautions do not set out the product as an attachment to automatic data printing machines. The installation manual calls for site preparation and for certain aspects of installation requiring upto four persons. Nowhere does the manual inform about compatibility for a specific genus of automatic data processing systems thereby precluding use with any automatic data processing systems except those enabled to transfer specific type of graphics to the printer. Most importantly, the printer is connectible to the internet through a router which, presumably, permits customer designed graphics through 'internet-wide' available software to be printed without any inputs from the automatic data processing machine or network to which the printer may be connected. That sets apart the descriptions in the two rival descriptions before us. Our factual evaluation of the product, in the light of descriptions in the tariff lines, reference to relevant *Explanatory Notes* in the Harmonized System of Nomenclature and the cited decisions, leads to the conclusion that adjudicating authority has fitted the impugned goods appropriately.

11. In so doing, the impugned order satisfies the pre-requisite set out by the Hon'ble Supreme Court in *HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh* thus

*'29. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the*

*Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof...'*

and, with the two rival headings being mutually exclusive, there is no call to subject the claimed and the determined to a comparison. Fitment within one excludes fitment in the other.

12. Learned Counsel had, on the submission of goods not being under control of customs or under seizure, contested the imposition of redemption fine under section 125 of Customs Act, 1962. The Hon'ble High Court of Bombay, in *Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc.* [2009 (8) TMI 115 – BOMBAY HIGH COURT], has held that

*'5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in*

*the nature of computation to the state for the wrong done by the importer/exporter.'*

This is in consonance with

*'126. On confiscation, property to vest in Central Government*

*(1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government.'*

of Customs Act, 1962 and, while liability to confiscation may lie on finding that goods have been imported in any of the situations enumerated in section 111 of Customs Act, 1962, the scope of notice empowered under section 124 of Customs Act, 1962 is limited to proposal to confiscate. Accordingly, an adjudicating authority will have to have access to goods to order confiscation and cannot luxuriate in consequence of confiscation by holding goods liable to be so. Fine is computed compensation to the Central Government for letting go of errant goods that vest in it on confiscation. Accordingly, we set aside the confiscation.

13. Having thus held against the appellant as far as eligibility to exemption from duty is concerned, we are, at the same time, concerned, and especially in the light of cited decisions as well as the subtle distinction between the tariff lines, that the demand of ₹ 12,11,70,379 on imports effected between 1<sup>st</sup> January 2016 and 15<sup>th</sup> September 2019, as also like penalty under section 114A of Customs Act, 1962 on the entirety of demand of ₹ 14,91,36,350, attaching to finding on the

ingredients enumerated in section 28(4) of Customs Act, 1962. It has been submitted by Learned Counsel that full disclosure was made in the bills of entry and that claim of a particular classification that was not founded on controverted facts could not be alleged to have interfered with empowerment to re-assess under section 17 of Customs Act, 1962. The perfunctory finding of 'misdeclaration' as sufficing to be compliant with 'wilful mis-statement' or 'suppression of fact' in the impugned order is not tenable. We, however, in the absence of detailed submission on facts arising from findings *supra*, and, obviously, not within the know of representation of both sides, are constrained in rendering adjudgement on such proposal in the show cause notice. To that extent, the matter is restored for fresh determination by the adjudicating authority after setting aside that portion of the order. For finding on the ingredients permitting resort to section 28(4) and section 114A of Customs Act, 1962, we order remand to the adjudicating authority.

14. Appeal is disposed off on the above terms.

*(Order pronounced in the open court on 04/11/2025)*

**(AJAY SHARMA)**  
***Member (Judicial)***

**(C J MATHEW)**  
***Member (Technical)***