CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 87078 of 2025

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-171/2025-26 dated 07.05.2025 passed by the Commissioner of Customs (Appeals), Mumbai Zone – III)

M/s Wipro GE Healthcare Pvt. Ltd. **.... Appellant**
C/s DHL Supply Chain India Pvt. Ltd.
BGR Warehousing Complex, Building No. 3,
Vahuli, Mumbai Nashik Highway,
Bhiwandi, Thane – 421 302

Versus

Commissioner of Customs (Import), Mumbai-III **.... Respondent**
Air Cargo Complex, Sahar, Andheri (East),
Mumbai – 400 099

WITH

Customs Appeal No. 87079 of 2025

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-170/2025-26 dated 07.05.2025 passed by the Commissioner of Customs (Appeals), Mumbai Zone – III)

M/s Wipro GE Healthcare Pvt. Ltd. **.... Appellant**
C/s DHL Supply Chain India Pvt. Ltd.
BGR Warehousing Complex, Building No. 3,
Vahuli, Mumbai Nashik Highway,
Bhiwandi, Thane – 421 302

Versus

Commissioner of Customs (Import), Mumbai-III **.... Respondent**
Air Cargo Complex, Sahar, Andheri (East),
Mumbai – 400 099

APPEARANCE:

Shri Roshil Deepak Nichani, Advocate for the Appellant

Shri Jitesh Kumar Jain, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85319-85320/2026

Date of Hearing: 17.12.2025

Date of Decision: 19.02.2026

PER: M.M. PARTHIBAN

These appeals have been filed by M/s Wipro GE Healthcare Private Limited, Thane (herein after, referred to as 'the appellants') assailing two Orders-in-Appeal being No. MUM-CUSTM-AMP-APP-170/2025-26 and No. MUM-CUSTM-AMP-APP-171/2025-26, both dated 07.05.2025, (herein after referred to as 'the impugned orders') passed by the same first appellate authority viz., Commissioner of Customs (Appeals), Mumbai Zone – III.

2.1 The facts of the case, leading to these appeals, are summarized herein below:

2.2 The appellants herein, had imported "LCD HB Colour Monitors without Stand, of size 19 inch" for use with medical equipment such as ultrasound machines, X-Ray machines, CT Scan and Magnetic Resonance Imaging system etc., through Air Cargo Complex (ACC), Mumbai and for this purpose, have filed various Bills of Entry (B/Es) periodically during the disputed period from December 2018 to February 2021, by classifying the "LCD HB Colour Monitors" under Customs Tariff Heading (CTH) 8528. The appellants have self-assessed the customs duty payable thereon by claiming the effective rate of Integrated Goods and Services Tax (IGST) payable @ 18%, as applicable to 'computer monitor' under Serial Nos. 383C & 384 of Schedule-III to Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017.

2.3 During the post clearance audit of the import transactions of the appellants, the department had objected to the classification/categorization of imported monitors adopted by the appellants for payment of IGST at the rate of 18%, under Serial Nos. 383C & 384 of Schedule-III, as against the claim of the department that applicable rate is of 28%, under entry in serial No. 154 of Schedule-IV, of the notification dated 28.06.2017, on the ground that the impugned goods are 'other' monitors which are designed to be used with medical equipment, X-Ray machines and are not for use with the computers or Automatic Data Processing machine (ADP). Accordingly, the department had proposed for revising the classification / categorization of imported goods to fall under IGST rate @ 28% in terms of entry at serial No. 154 of the Schedule-IV of Notification No.01/2017-IT(Rate) dated 28.06.2017. On the above understanding, the department had initiated show cause proceedings including holding of pre-notice consultation with the appellants. On completion of such process, the department had issued of Show Cause Notices (SCNs) dated 15.06.2023 and 19.12.2023, for revising

the classification/ categorization and demanding differential duty of customs in respect of the subject B/Es during the disputed period covering December 2018 to February 2021, under Section 28(4) the Customs Act, 1962 along with interest, and proposing for confiscation of impugned goods and for imposition of penalties on the appellants and their Customs Broker (CB) under the provisions of the Customs Act, 1962. The said SCNs were adjudicated by the Original authority in the Orders-in-Original dated 15.06.2023 and 06.06.2024 by confirming the proposals made in the SCNs. On filing of appeals against the said Orders-in-Original dated 15.06.2023 and 06.06.2024, the learned Commissioner (Appeals) vide the impugned orders has set aside the original orders and referred the matter back to the original authority to decide the matter afresh on the terms mentioned in the impugned orders. Feeling aggrieved with the impugned orders, the appellants have filed these two appeals before the Tribunal.

3.1 Learned Advocate appearing for the appellants submitted that the decision of the first appellate authority by referring the matter back to the original authority is incorrect to the extent that on similar set of facts, the Co-ordinate Bench of the Tribunal at Mumbai has conclusively decided the issue of classification/categorization for purpose of collection of IGST in favour of assessee vide Final Order No. A/86879/2024 dated 18.11.2024 in the case of *M/s Philips India Limited* Vs. *Commissioner of Customs (Import), ACC, Mumbai* in Customs Appeal No. 85794 of 2023. In this context, learned Advocate further submitted that the learned Commissioner (Appeals) had erred, in holding that the decision of *Philips India Limited* (supra) produced by them was 'additional evidence' in terms of Rule 5 of the Customs (Appeals) Rules, 1982, and therefore, the matter was required to be remanded back to the original authority, inasmuch the phrase documentary/additional documentary evidence does not include the decision of the Court/Tribunal. On this submission, he had relied upon the judgements of the Hon'ble High Court of Telangana in the case of *Sony India Private Limited Vs. Union of India* – 2022 (379) E.L.T. 588 (Telangana) and Hon'ble High Court of Bombay in the case of *Devkinandan J Gupta Metals LLP Vs. Union of India* – 2025-TIOL-1238-HC.

3.2 Learned Advocate also stated that the appellants have fulfilled the requirement of the concessional rate of IGST under serial No.383C/384 of the Notification No. 01/2017-IT(Rate) dated 28.06.2017, inasmuch as the imported monitors are classifiable under sub-heading 8528 52 and are of screen size not exceeding 32 inches; further, these are not just capable of

being directly connected to and designed for use with Automatic Data Processing (ADP) machines but were, in fact, connected to the ADP machines/computers; which are in fact connected to the medical equipment such as MRI machines, CT scanners etc.

3.3 Thus, learned Advocate claimed that the appeals should have been decided by learned Commissioner (Appeals) on the basis of binding decision of the Tribunal and the merits of the case. He further, prayed before this Bench that since the order of the Tribunal in the identical case of *Philips India Limited* (supra) have been finally settled in favour of the appellants therein by the Hon'ble Supreme Court vide Civil Appeal Diary No. 22160 of 2025 in dismissing the appeal filed by the department, this Tribunal may allow the present appeals in their favour.

4. Learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that since the matter was remanded for consideration by the original authority, there is no ground for interference in the impugned orders.

5. Heard both sides and perused the case records.

6. The issue for consideration before us is determination of the proper classification/categorization of imported goods, for deciding on the appropriate levy of customs duty i.e., additional duty of customs, more particularly the Integrated Goods and Service Tax (IGST) leviable under sub-section (7) of Section 3 of the Customs Tariff Act, 1975; and, whether the decision of the first appellate authority in remanding the matter for a fresh decision by the original authority, on the basis of the order passed by the Tribunal in an identical set of facts in the case of *Philips India Limited* (supra), as 'additional evidence', in the impugned order is sustainable or not?

7. It is a fact on record that the facts of the present case are identical to the case decided by this Tribunal in the case of *Philips India Limited* (supra) which is subsequently upheld by the Hon'ble Supreme Court in its judgement dated 14.07.2025. On perusal of the impugned orders, at paragraph 8, it also transpires that such fact of identical issue having been settled by the Tribunal in *Philips India Limited (supra)* has also been accepted by the learned Commissioner (Appeals).

8. On careful perusal of the impugned orders of the learned Commissioner (Appeals) it transpires that since the order of the Tribunal dated 18.11.2024

in the identical facts of the case of *Philips India Limited* (supra) was not available before the original authority, which was available before him, he had remanded the matter for fresh adjudication by the original authority, in terms of Rule 5 of the Customs (Appeals) Rules, 1982. The relevant portion of the findings in the impugned orders, which are identically worded, are as follows:

> *"8. As it is a case of dispute related to applicability of Notification No.01/2017 dated 28.06.2017 at Sr. No. 154 of Schedule-IV or Sr. Nos. 383C and 384 of Schedule-III of the said Notification, the admissibility of any particular Serial No. and a particular Schedule of the said Notification have to (be) decided based on exact description (including use and function thereof) of the subject goods……..In this connection, it is to put forth that the impugned order is dated 15.06.2023/18.11.2024 and the abovesaid Order of the CESTAT is dated 18.11.2024. Therefore, it is clear that the Adjudicating Authority did not have an opportunity to consider the impact of the Order dated 18.11.2024 on the CESTAT on the assessment and incidental consequence in respect o the impugned goods. In the light of the abovesaid Order dated 18.11.2024 of the CESTAT, which is an additional evidence in terms of Rule 5 of the Customs (Appeals) Rules, 1982 for consideration by the adjudicating authority, the impugned order(s) is required to be set aside and the matter is required to be referred back to the Adjudicating Authority with direction to examine the matter afresh taking into account the Order dated 18.11.2024 of the CESTAT along with other extant laws & procedure vis-à-vis facts and circumstances of the case and decide the matter accordingly….."*

9.1 In order to examine the above issue, the relevant extract of the Rule 5 of the Customs (Appeals) Rules, 1982 is quoted herein below:

> ***Production of additional evidence before the Commissioner (Appeals).***
>
> ***"Rule 5.*** *(1) The appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the adjudicating authority, except in the following circumstances, namely :-*
> *(a) where the adjudicating authority has refused to admit evidence which ought to have been admitted; or*
> *(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by that authority; or*
> *(c) where the appellant was prevented by sufficient cause from producing before the authority any evidence which is relevant to any ground of appeal; or*
> *(d) where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.*
>
> *(2) No evidence shall be admitted under sub-rule (1) unless the Commissioner (Appeals) records in writing the reasons for its admission.*
>
> *(3) The Commissioner (Appeals) shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer*

authorised in this behalf by the said authority has been allowed a reasonable opportunity –
(a) to examine the evidence or documents or to cross-examine any witness produced by the appellant; or
(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the powers of the Commissioner (Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal."

9.2 Under the legal provisions of Section 138B of the Customs Act, 1962, providing relevancy of the statement, mandates that for any statement made and signed by a person before any Gazetted officer of customs, during the course of any inquiry or proceeding under this Act, shall be taken as relevant, for the purpose of proving, in any prosecution for an offence under the Act of 1962, when certain conditions are fulfilled as stated therein. Further, under Section 149 *ibid*, bill of entry or a shipping bill or bill of export have been specified as the documents presented in the customs house which could be considered for amendment. There is no definition provided under the said Act of 1962 for document of 'evidence' or 'additional evidence'. Therefore, reference is placed on the legal provisions in the General Clauses Act, 1897 and the Indian Evidence Act, 1872 providing the meaning of such terms for appreciation of the finding given by the learned Commissioner (Appeals) in the impugned orders. The relevant extracts are quoted below:

General Clauses Act, 1897

*"**Section 2 (18)**: "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter;"*

Indian Evidence Act, 1872.

***"Section 3** "Evidence". ––"Evidence" means and includes –– (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; (2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence."*

9.3 On careful perusal of the above legal provisions, it transpires that 'evidence' or 'additional evidence' refers in the context of the Act of 1962, to the statements recorded or documents produced under Section 108 ibid; and similarly to the Bill of Entry or Shipping Bill or Bill of Export; it definitely does not refer to the judgement/order of the Court/Tribunal. This view of ours is also supported by the judgements of the Hon'ble High Court of Telangana and Hon'ble High Court of Bombay in the case of *Sony India Private Limited*

(supra) and *Devkinandan J Gupta Metals LLP* (supra), respectively. The relevant extract of the said judgements are quoted below:

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> ***"38.*** *In the impugned order dated 7-2-2020, the 2nd respondent stated that the judgment of the Supreme Court in M/s. SRF Ltd. (supra) was delivered on 26-3-2015 and the same was not available/in existence at the time i.e. August, 2014 to January, 2015 when the goods pertaining to the relevant BoEs were cleared, and so the amendment that petitioner requested cannot be made to those BoEs.*
>
> ***39.*** *It is clear that the 2nd respondent had taken the decision of the Supreme Court as "documentary evidence" which was not in existence at the time of clearance of the goods.*
>
> ***40.*** *Law declared by the Supreme Court, unless made prospective in operation in its judgment, is always deemed to be the law of the land. It cannot be construed as applicable only after the date of pronouncement of the judgment of the Supreme Court.*
>
> ***41.*** *In M.A. Murthy v. State of Karnataka [(2003) 7 SCC 517], the Supreme Court had declared :*
>
> > *"8. ... Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in L.C. Golak Nath v. State of Punjab [AIR 1967 SC 1643] .... It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs."*
> >
> > *(Emphasis Supplied)*
>
> ***42.*** *That apart, in our opinion, the term "documentary evidence" used in Section 149, in the context of amendment to BoEs or like documents, cannot include decisions of Courts."*

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> ***5.*** *In our opinion, production of the judgment of this Court, which may have some relevance to the Petitioner's case, could not have been shut out on the ground that the same amounts to additional evidence and that the procedure for adducing additional evidence was not substantially followed. The Petitioner should have been allowed to produce this judgment, and upon consideration of the same, it was always open to the Appellate Authority to take any appropriate view in the matter. But shutting out the production of this judgment and order was not appropriate.*
>
> *xxx xxx xxx xxx*
>
> ***7.*** *We agree with Ms. Majumdar. Even the proceedings after this Court's order dated September 11, 2023, must be allowed to be produced. The*

Appellate Authority must consider all these materials and then dispose of the appeal afresh.

8. *However, we think that the impugned Order-In-Appeal dated 29 May 2024 must be set aside with liberty to the Petitioner to produce and rely upon this Court's judgment and order dated 11 September 2023 and the Respondents must equally be allowed to rely upon the proceedings in the fresh show cause notice issued to Mr. Pradhan and the cancellation order dated 18 March 2024. Accordingly, we set aside the impugned Order-In-Appeal dated 29 May 2024 and remand the matter to the Appellate Authority."*

9.4 On the basis of our examination in the preceding paragraphs 9.1 & 9.2 and based on the judgements of the Hon'ble High Court of Telangana and Hon'ble High Court of Bombay quoted at paragraph 9.3, we are of the opinion that the order of the Tribunal cannot be treated as 'additional evidence'/ 'document' of evidence for simply remanding the matter for de novo consideration afresh by the original authority when Section 128A of the Act of 1962 empowers him to accept additional grounds, even if it is not specified in the grounds of appeal. Therefore, on this point alone, we find that the impugned orders are liable to be set aside.

10. On examination of the factual matrix of the present case, we find the disputed issue involved in the present case before this Bench, is exactly the same as was held by the Co-ordinate Bench of the Tribunal in the case of *Philips India Limited* (supra). We note that while passing the impugned orders, the learned Commissioner (Appeals) did not have the benefit of the judgement passed by the Hon'ble Supreme Court dated 14.07.2024. However, a detailed order of the Tribunal dated 18.11.2024 examining classification declared by the appellants under CTH 8528 5200 and the revised classification claimed by the Department under CTH 8528 5900 was available with the learned Commissioner (Appeals) and the said order had conclusively decided that the appropriate IGST payable on such goods is @ 18% *ad valorem* in terms of entry at serial No. 154 of the Schedule-IV of Notification No.01/2017-IT(Rate) dated 28.06.2017. Therefore, the learned Commissioner (Appeals) should have decided the matter on merits in following the judicial precedent set by this Tribunal, which is binding on him so as to foster judicial discipline and in the interest of justice. Further, even if the learned Commissioner (Appeals) is apprehensive of the outcome of the appeal preferred by the department, by having knowledge of the fact that the department had gone on appeal before the Hon'ble Supreme Court in the case of *Philips India Limited* (supra), he should have decided the case by following the principles laid down by the Hon'ble Supreme Court in the case

of *Union of India Vs. Kamalakshi Finance Corporation Ltd.* - 1991 (55) E.L.T. 433 (S.C.), since there was no stay granted against the order of the Tribunal dated 18.11.2024, by the Hon'ble Supreme Court. On considering the fact that the issue under dispute is identical to the case of *Philips India Limited* (supra) and since the issue has already attained finality by the judgement of the Hon'ble Supreme Court dated 14.07.2025 in upholding the said order of the Tribunal dated 18.11.2024 and dismissing the Civil Appeal Diary No.22160 of 2025 filed by the department, we do not find it necessary to go in detail on the very same issue, which has already attained finality. Further, as the appellants have paid the IGST at the appropriate rate of 18% *ad valorem*, there is no further payment of any additional IGST involved in the present case, in terms of the settled position of law, as per the Hon'ble Supreme Court's judgement dated 14.07.2025.

11. In view of the order passed by the Co-ordinate Bench of the Tribunal in the case of *Philips India Limited* (supra), which was upheld by the Hon'ble Supreme Court, we are of the considered opinion that the matter is no more *res integra*. Accordingly, the impugned orders are set aside and the appeals are allowed in favour of the appellants.

12. In the result, the impugned orders are set aside and the appeals are allowed in favour of the appellants.

(Order pronounced in open court on 19.02.2026)

(M.M. Parthiban)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Sinha