CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70014 of 2019

(Arising out of Order-In-Original No.27-COMMR-NOIDA-CUS-2018, dated - 18/10/2018 passed by Commissioner, Customs, Noida)

M/s Subros Ltd. **.....Appellant**
(LGF, World Trade Centre
Barakhamba Lane, New Delhi)

VERSUS

Commissioner, Customs, Noida **....Respondent**
(Customs House Noida)

AND

Customs Appeal No.70264 of 2019

(Arising out of Order-In-Original No.27-COMMR-NOIDA-CUS-2018, dated - 18/10/2018 passed by Commissioner, Customs, Noida)

Commissioner, Customs, Noida **.....Appellant**
(Customs House Noida)

VERSUS

M/s Subros Ltd. **....Respondent**
(LGF, World Trade Centre
Barakhamba Lane, New Delhi)

APPEARANCE:

Shri B.L. Narasimhan, Advocate &
Shri Atul Gupta, Advocate for the Assessee
Shri Santosh Kumar, Authorised Representative for the Revenue

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70965-70966/2024

DATE OF HEARING : 11.12.2024
DATE OF DECISION : 11.12.2024

SANJIV SRIVASTAVA:

These appeals, one by Assessee (Appellant) and other by Revenue, are directed against Order-In-Original No.27 /COMMR./NOIDA-Cus/2018 Dated-18.10.2018 of the

Commissioner, Noida Customs. By the impugned order following has been held:

"ORDER

a) I reject the classification of the item, namely "Resistor Blower" imported vide Bills of Entry as claimed and shown in the Annexure-A to F to the Show Cause Notice, under CTH 8533 40 90, as claimed by the importer noticee M/s Subros Ltd., LGF, World Trade Centre, Barkhambha Lane, New Delhi.

b) I hold that the item imported, namely "Resistor Blower", imported vide Bills of Entry as shown in the Annexures-A to F to the Show Cause Notice, is classifiable under CTH 8415 90 00 of the Customs Tariff Act, 1975 for the purpose of levy and collection of Customs duty

c) I deny the benefit of exemption from Customs duty under Notification No. 24/2005-Cus (S.N. 21) dated 01.03.2005 claimed by the importer noticee M/s Subros Ltd., LGF, World Trade Centre, Barkhambha Lane, New Delhi, on the item "Resistor Blower" imported vide Bills of Entry as shown in the Annexure-A to F to the Show Cause Notice;

d) I hereby confiscate the goods namely "Resistor Blower" imported vide Bills of Entry as shown in Annexure-A to F to this SCN totally valued at Rs. 47,04,29,596/- (Rupees Forty Seven Crore Four Lakh Twenty Nine Thousand Five Hundred Ninety Six only) under Section 111 (d) & (m) of the Customs Act, 1962;

e) I order for recovery of the differential duty amounting to Rs.5,66,91,471/- (Rupees Five Crore Sixty Six lakh Ninety One Thousand Four Hundred Seventy One only) as shown in the Annexure-G to this SCN (summary of Annexure- A to F) short paid, under Section 28(4) of the Customs Act, 1962 along with interest chargeable under Section 28AA ibid;

f) I impose a penalty of Rs. 50,00,000.00 (Rupees Fifty Lakhs Only) on the importer noticee under Section 112(a) and a penalty of Rs.5,66,91,471/- (Rupees Five Crore Sixty Six lakh Ninety One Thousand Four Hundred Seventy One only) under Section 114A of the Customs Act, 1962;

g) I hereby appropriate an amount of Rs. 1,06,39,614/- (Rupees One Crore Six Lakh Thirty Nine Thousand Six Hundred Fourteen Only) already paid towards the payable duty by the importer noticee under protest against Bills of Entry as shown in the Annexure-F to impugned Show Cause Notice and direct the same to be adjusted against the importer noticee's duty liability"

2.1 Appellant having IEC No. 0588042676, filed Bill of Entry No. 6023483 dated 18.07.2016, to seek clearance of different components of Automotive

Air-conditioning systems imported from M/s. Sumitomo Corporation, 8-11 Harumi, I Chome, Chou-KU, Tokyo, Japan under Invoice no. LKEE-16-4931- 156 dated 21.06.2016.Under the said Bill of Entry at S. Nos. 2,3,38,40,41,53 58, the said importer noticee declared components of Automotive AC system under the description "RESISTOR BLOWER" (Captive consumption, components for the manufacture of Automotive AC systems) and classified the same under CTH 85334090 of the Customs Tariff Act, 1975 and claimed 'Nil' rate of duty under Notification No. 24/2005-Cus (S.N. 21) dated 01.03.2005.

2.2 BOE was interdicted from RMS for first check examination and representative samples of item namely, "RESISTOR BLOWER" declared at S. Nos. 2, 3, 38, 40, 41, 53 & 58 of the said BOE, were called for. The consignment imported vide Bill of Entry No. 6023483 dated 18.07.2016 was examined on 100% basis under First Check by the Shed officers in the presence of the AC (Shed) and Custom Broker's representative and representative samples of the items declared at S Nos. 2, 3, 38, 40, 41, 53 & 58 of the said BOE were forwarded to the Appraising Group. In First Check Report dated 22.07.2016, the Shed officers had reported that the goods were in bulk pack. The representative samples of the items, namely "RESISTOR BLOWER" declared at S. Nos. 2, 3, 38, 40, 41, 53 & 58 of the said BOE were inspected in the Group. It was found that item at Sr. No. 2, 38, 40, 41 & 58 were Resistor blowers and same appeared to be part of Automotive Air-conditioning V systems classifiable under CTH 84159000 of the Customs Tariff Act, 1975. Accordingly, case was booked against the Importer noticee for mis-declaring the goods.

2.3 Also Appellant had in the past had cleared the item namely "Resistor Blower vide Bills of Entry Nos. 7196970 dated 23.06.2012 7250625 dt 29.06.2012, 7345078 dt 10.07.2012 and 7393640 dt 16.07.2012 classifying them under CTH 84149090 as part of machines of other category other than air or vacuum pump, gas compressor, bicycle pumps, piston generator electric fan or industrial fan. This fact strengthens department view that item in question namely Resistor Blower is not merely a resistor but a specific part of a machine.

2.4 As per details available on the EDI system and its further comparison with the details provided by the party vide letter dated 13.04.2017 for the FY 2012-13; 72 2013-14; 2014-15, 2015-16, 2016-17 8 2017-18, inventory of consignments of "RESISTOR BLOWER" which have earlier been cleared by the importer noticee under CTH 85334090 of the Customs Tariff Act, 1975 claiming benefit under Notification No. 24/2005-Cus (S.N. 21) dated 01.03.2005 or by paying Customs duty @ 7.5% under CTH 84149090 under protest and duty short paid thereon, was worked out as detailed below:

				Amount in Rs
FY	ASSESSABLE VALUE	DUTY PAID	DUTY PAYABLE	DUTY SHORT PAID
2012-13	79998432.54	13911727.42	23552338.52	9640611
2013-14	93411380.95	16244239.15	27501244.66	11257006
2014-15	83699245.34	14555298.76	24641894.82	10086596
2015-16	93235064.42	16213577.70	27449335.32	11235758
2016-17(UP TO 18.07.16)	31797246.13	5529541.10	9361427.23	3831886
2016 (w.e.f. 19.07.2016) - 17 Till 19.07.2017)	88288226.63	15353322.61	25992936.80	10639614
TOTAL	470429596	81807706	138499177	56691471

2.5 A Show Cause Notice dated 07.08.2017 was issued to the Appellant asking them to show cause as to why:-

(a) The classification ofitem, amely "Resistor Blower" imported vide Bills of Entry as claimed and shown in the Annexure-A to F to the Show Cause Notice, under CTH 85334090 of the Customs Tariff Act, 1975 should not be rejected;

(b) The item, namely "Resistor Blower" imported vide Bills of Entry as shown in the Annexure-A to F to the Show Cause Notice should not be classified under CTH 841590 00 of the Customs Tariff Act, 1975 for the purpose of levy of applicable duty;

(c) The benefit of duty claimed on the item "Resistor Blower" under Notification No. 24/2005-Cus (S.N. 21) dated 01.03.2005 imported vide Bills of Entry as shown in the

Annexure-A to F to the Show Cause Notice should not be denied;

(d) The goods namely "Resistor Blower" imported vide Bills of Entry as shown in Annexure-A to F to the Show Cause Notice totally valued at Rs.47,04,29,596/- (Rupees Forty Seven Crore Four Lakh Twenty Nine Thousand Five Hundred Ninety Six only) should not be confiscated under Section 111 (d) & (m) ibid;

(e) The differential duty amounting to Rs.5,66,91,471/- (Rupees Five Crore Sixty Six lakh Ninety One Thousand Four Hundred Seventy One only) as shown in the Annexure-G to this SCN (summary of Annexure- A to F) short paid should not be recovered from them under Section 28(4) of the Customs Act, 1962 along with interest chargeable under Section 28AA ibid;

(f) Penalty should not be imposed upon them under Section 112(a) & Section 1 14A of the Customs Act, 1962;

(g) Amount of Rs. 1,06,39,614/- (Rupees One Crore Six Lakh Thirty Nine Thousand Six Hundred Fourteen Only) paid towards duty under protest against Bills of Entry as shown in the Annexure-F to this SCN should not be appropriated towards duty demanded against the said Bills of Entry as shown in Annexure-F to the Show Cause Notice;

2.6 The show cause notice has been adjudicated as per the impugned order.

2.7 Appellant being aggrieved of confirmation of demands and penalties imposed filed the appeal

2.8 Revenue being aggrieved that penalty imposed under Section 114A did not include the interest amount filed the appeal

3.1 We have heard Shri B L Narasimhan & Shri Atul Gupta advocate for the Appellant and Smt Chitra Srivastava, Authorized Representative for the Revenue.

3.2 Arguing for the Appellant learned counsel submits that:

- This issue of classification in the present case is no longer *res integra* since it has been decided unconditionally and conclusively in favour of Appellant

- the show cause notice admittedly considered the issue of classification in the present case as similar to the earlier case where the issue of classification was decided in favour of the Appellant vide Order-in-Appeal D- 11/PPG/647/2016 dated 12.07.2016 as the impugned SCN stated that the present SCN is being issued as an appeal against such Order-in-Appeal has been preferred by the department before the Hon'ble CESTAT.
- Order-in-Appeal D-11/PPG/647/2016 dated 12.07.2016 has already been upheld by the Hon'ble CESTAT vide Final Order No. 58389/2017 dated 12.12.2017 specifically in the matter of the Appellant only, and the therefore, the adjudicating authority was bound to follow the same unreservedly because the Final Order of the Hon'ble CESTAT was even not challenged and attained finality
- This decision has been followed once again in the Appellant's own case and appeal was allowed [Subros Ltd. [2018 (363) E.L.T. 849 (Tri.- Del.)]]
- However, the adjudicating authority committed a grave error by flouting the judicial discipline by even not considering the decisions of the Hon'ble CESTAT in the matters of the Appellant when the same were undisputedly cited before him. Only on this ground the impugned order is deserved to be set aside

3.3 Authorized representative reiterated the findings recorded in the impugned order and the grounds agitated in the appeal filed by the Revenue.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records the findings as follows:

> *"14. I find that the department while issuing the show cause notice to the importer noticee, inspected the representative samples of the items, namely RESISTOR BLOWER" declared at S. Nos. 2, 3, 38, 40, 41,53 & 58 of the said Bill of Entry (BOE) were inspected in the Appraising Group. It was found that item at Sr. No. 2, 38, 40, 41 & 58 were Resistor blowers and same appeared to be part of Automotive Air-conditioning systems classifiable under CTH 84159000 of the Customs Tariff Act, 1975. Accordingly, a query was raised to*

the importer in the EDI system on 22.07.2016 to clarify the issue and also to provide documents in support of the claimed classification of the said item, namely "RESISTOR BLOWER" under CTH 85334090. The importer vide its letter dated 25.07.2016 submitted technical details of the imported "Resistor Blower". In the technical details, it is mentioned that the "RESISTOR BLOWER" is a type of variable resistor that is used in the Air-conditioning circuit in a vehicle to control the speed of the fan in the system. It is also mentioned that the Blower Resistor consists of resistors, terminals to connect to the blower switch and circuit, heat sink to dissipate heat and plastic base for housing the resistor, terminal and heat sink alongwith PCB. The importer have also submitted that the Resistor Blower does not contain any other active or passive component, other than a resistor The importer vide letter dated 28.07.20 16 further submitted that the imported Resistor Blowers are classifiable under CTH 8533 which covers "Electrical Resistors (including rheostats and potentiometers) other than heating resistors and thus all type of Electrical resistors including variable Resistors are covered 1o6 under CTH 85334090. The importer in support of the claimed classification of the "esistor blower under CTH 85334090,`also referred to CBEC Circular No. 78/2002-Cus dated 28.11.2002 and Hon bte Supreme Court's decision in case of Collector of Central Excise vs. Delton Cable Ltd. reported in (ELT 181/373 decided on 15.02.2005. Vide said Circular it was clarified that Metal Oxide Varistors are classifiable under CTH 85.33.

15. I further find from the Show Cause Notice that on inspection of the sample of the items; examination of the declaration about part number in invoice; examination f the Technical specifications / Diagram of the product and information provided by the importer with respect to the item, "RESISTOR BLOWER" declared by the importer at S. Nos. 2, 38, 40, 41, 58 of the said BOE in question, it appeared that the item was not a general purpose use item as claimed and not merely a resistor or assembly of resistors as claimed but a specific item manufactured as an identifiable part of the Auto Air Conditioning system. The product is in the form of an assembly /sub-assembly consisting of various items such as resistors, connectors, mounted PCB, metal plates, plastic coverings etc. These items are not mere resistors as claimed by the party. Further, the item in question is having an electrical circuit with resistances. Most importantly, part number has also been allotted, as can be seen from the declaration made by the importer noticee in the import documents. The item appears to be a safety device, used in the auto air conditioning system for controlling the functioning of Blower Motor; Blower Motor runs at the speeds of low, medium and high when current passes through the resistances given in circuit. It was also apparent that the said importer in the *past had cleared the same item namely "Resistor Blower" supplied from the same foreign country vide Bills of Entry Nos. 7196970 dated 23.06.2012, 7250625 dt 29.06.2012, 7345078 dt 10.07.2012 and 7393640 dt 16.07.2012 classifying them under CTH 84149090 which is specifically for parts of machines of other category other than a air or vacuum pump, gas compressor, bicycle pumps, piston generator, electric fan or industrial fan. These facts strengthen the department's view that the item in question namely Resistor Blower is not merely a resistor but a specific part of a machine.*

16. It is fact on record that the item in dispute is a Resistor Blower. The item was declared as such by the importer in their import documents. Even Revenue doesn't challenge it to be so. It is only the classification of the said item that had given rise to the present dispute. The importer has classified the item "RESISTOR BLOWER" under CTH 85334090 whereas the Revenue has contended that it falls under CTH 84159000 of the Customs Tariff Act, 1975. By filing the said item under CTH 85334090, the importer had claimed and availed the benefit under Notification No. 24/2005-Cus (S.N. 21) dated 01.03.2005 to pay NIL Customs duty.

17.1. Classification is most critical when new products are introduced into a company's trade environment because it requires an in-depth understanding of the product description, its character and use as well as knowledge of the 107 classification system process. Any ambiguity in the product descriptions and different classifications are the biggest challenges to product classification globally. Governments scrutinize HS codes and product descriptions to detect fraudulent activities

17.2. The Comptroller and Auditor General of India, an independent Supreme Audit Institution, mentioned in its report no.12 of 2014 that the Directorate of Revenue Intelligence of India had detected 298 duty evasion cases involving mis-declaration of goods to the tune of Rs.2392. .26 Crore (USD 378 Million) in the financial year 2013.

17.3. A lot of risk to a misleading product classification brings company and can substantially erode its reputation and profitability due to large a wrong or penalties and recovery. For example, chain and sprockets used in motorcycles could either be classified under ITC (HS) Code 73151 100 as roller chain under the subheading of chain and parts thereof, or under ITC (HS) Code 84839000 under the subheading of toothed vehicles and chain sprockets. The former has a preferential duty rate of 0% under the Indo-ASEAN FTA and the latter has a preferential rate of 5%. However, as for automobiles, based on the end use, these classifications mentioned above are not applicable. The product should be classified under 87141090 under the subheading of parts and accessories of vehicles, which are *not eligible for preferential rates under the India-ASEAN Free Trade Agreement*

17.4. If a company is found to have misclassified commodities for import and export, the local customs authority may flag the company for heightened scrutiny This will lengthen the product's review process and delay the import and export process. If misclassification is found to be a continuing problem, the government may cancel the company's Authorized Economic Operator (AEO) status and in extreme cases may cancel its Importer Exporter Code (IEC). The person responsible for classification ultimately does not want to be the source of this type of action.

18. Before I take up the matter for passing an order in this case before me, I must discuss in brief about what are the BLOWER RESISTORS. Blower resistors are resistors which are used to control the fan speed of automotive blowers. The fan speed can be changed either by switching the blower resistor resistance mechanically using a rotating lever, or electronically by the air conditioning system. The change in resistance then limits the current through the motor which dictates the speed at which the blower fan works. Blower resistors being a mechanical component, are prone to wear and tear and are the most common point of failure in a car's air conditioning system

19. Regarding classification of the imported item in question i.e. BLOWER RESISTOR under CTH 85334090, the importer had relied upon various judgments of various fora as discussed above in CASE FOR THE IMPORTER They also made mention of Circular No.78/2002-Cus dt. 28.11.2002 that clarifies that the resistors irrespective of their end use are classifiable under 85.33 in terms of Section note 2 (a) to Section XVI.

20. The importer had all along been contending that the item in question is BLOWER RESISTOR and is classifiable under CTH 85334090. They also admitted that the same i.e. BLOWER RESISTOR allows the driver of a vehicle to regulate the blower speed of its air conditioning system. This is achieved by providing different levels of resistance in the circuit. Their argument implies that irrespective of the air conditioning system, the BLOWER RESISTOR imported by them is classifiable under CTH 85334090 and eligible for exemption under Notification No. 24/2005-Cus (S.N. 21) dated 01.03.2005.

21. I agree that the relevance of end use in classification is only under certain circumstances and not always. In a judgement relating to a multi-functional machine, the Supreme Court has held that the predominant function would be relevant in determining the classification. In the case of Xerox India Ltd. vs. Commissioner of Customs, Mumbai - 2010 (260) ELT 161 (SC), the issue was about the classification of a multi-functional machine which works as *printer, fax machine, copier and as scanner when it is attached to a computer. The importer noticee in that case wanted to classify it under Item 8471, where the Customs duty was nil. This item covers automatic data processing machines and units thereof, one of the units being "combined input and output units". Revenue wanted to classify it under the residual Item 8479 (machines having individual functions not specified elsewhere) where the rate of duty is 7.5%. The importer noticee in that case argued that the machines work with the computer as its input and output unit. The Supreme Court took into account the fact that the multi- functional machine in question had about 85% of the total parts and components along with manufacturing cost allocated to printing. This clearly shows that the printing function emerges as the principal function and gives the multi-functional machine its essential character. Since printer is included in Item 8471 the classification of the machine under this heading was justified and accepted by the Supreme Court. Specifically the sub-item 8471.60 was chosen by the Court*

*22. The end use criterion is not always relevant for the purpose of determining classification. It is not relevant when market parlance determines the classification. It is, however, relevant in certain circumstances but if it is relevant it is only the predominant use which is relevant. In the case of Annapurna Carbon Industries Co. vs State of Andhra Pradesh AIR 1976 SC 1418, the Supreme Court held that the deciding factor in the matter of classification would be the predominant use or ordinary purpose to which a product is put and it is not enough to show that the article can be put to other uses also. In the case of ACTO v Jawhar Patang House - 1993(88)STC321(Raj.), relating to the Rajasthan Sales Tax Act, 1954, the issue was whether cotton sewing thread would also cover cotton thread for flying kites. If not, it would attract the general rate of sales tax which was lower. The High Court held that the commodity sold was cotton thread whose primary use is sewing thread If it iS used for flying kites. it a will not change the basic character of the commodity on account of its use. "The taxation of a commodity is based mainly on its primary and general use. If the commodity is capable of use for some other purpose then because of the use in such other purpose, there cannot be any difference in the rate of-tax," held the Court. In the case of Kundanmal Ganeshwal v. State of Karnataka - 1995 (96) STC 149 (Kar.), relating to the Karnataka Sales Tax Act, 1957, the High Court has held that balloons are primarily used as children's toys and the decorative purpose is incidental. So, it would fall under Entry 47 which is *children toys costing not more than twenty rupees per item"*

23. The conclusion is that end use is not relevant for classification as much as the basic identify of the goods, *tariff entry and market parlance are. It is relevant only when the description or definition of the goods in the tariff is based explicitly or implicitly on use criterion. If the description of the definition is not based on use criterion, it is the market parlance which determines the issue. Use is also the basis of coming to the correct understanding of the market parlance. End use and manufacturing process can be taken into consideration, if they agree with market parlance. But if they differ from the market parlance, then the latter will prevail. When there are various uses, it is the predominant or principal or primary use which has to be taken into account.*

25. I find that the importer has declared the subject item as Resistor Blower (Captive Consumption, Components for the mfg of Automotive AC). There is no doubt that the subject items were used as components for manufacturing of automotive air conditioner. Use of a given item is relevant for classification purpose. Yet, when there are various uses, it is the predominant or principal or primary use which has to be taken into consideration. I, therefore, find that the subject item i.e. the Resistor Blowers, were used as component for manufacturing of automotive air conditioner and therefore rightly classified under CTH 84159000 of the Customs Tariff Act, 1975. Accordingly, I find that the importer has wrongly availed the exemption benefit of Notification No. 24/2005-Cus (S.N. 21) dated 01.03.2005.

26. The importer have attempted to prove that the exporter of the said subject goods viz. M/s Sumitomo Corporation, 8-11, Harumi, 1 Chome, Chou-KU Tokyo, Japan had declared the said item i.e. Resistor Blowers under CTH 3533.21.000 but the evidence provided by the importer which is a Shipping Bill dt.13.02.2018 that pertain to the period after the issuance of Show Cause Notice. Hence it is not material and relevant in the present case and, I do not take cognizance of it.

27. Classification of products by Customs Administration across the world is bases upon the Harmonized System of Nomenclature (HSN). The Indian Customs Tariff Act, 1975 and its Schedules were also drafted on the basis of the HSN When such is the case, in the matter of classification of goods moving across the borders in International trade, the Shipping Bill filed in the exporting country and Bill of Entry filed in the importing country for the purpose of classification of goods are mirror images of each other. When the name, character and use of a product does not change in movement across borders, when exported from one country to another, it is necessary, if not mandatory to look at the classification of the product in the exporting country as contained in the Shipping Bill filed by the foreign supplier

28. In the present case, the importer noticee has failed to provide copies of the Shipping Bills filed in the exporting country in respect of the goods imported by the importer *noticee during the period under consideration in the Show Cause Notice. It is evident from the records of the imports at ICD, Dadri, made by the importer noticee, that it has been claiming classification for the same goods i.e. "Register Blower" under different Customs Tariff Headings at different points of time, only to tailor make its classification for the same product "Resistor Blower" under different Customs Tariff Headings (CTHs), only to avail the benefit of exemption from Customs duty under particular notifications containing those CTHs. I, therefore find that in the absence of a copy of the Shipping Bill containing the correct classification in respect of the imported goods under consideration in the foreign supplier country, the classification claimed by the importer noticee in the present case is unacceptable and untenable. This is particularly so when the Shipping Bill of the same foreign supplier for the period subsequent to the period under consideration can be submitted and has been submitted to me.*

29. It is also a fact on record that the importer noticee itself now, had classified the same items i.e. the Resistor Blowers imported now, under CTH 84149090 during the period prior to the issuance of Show Cause Notice. In this regard, the importer has submitted that it is a well settled principle in taxation law that there is no estoppel on classification, and a classification mistakenly adopted is not binding on either the assessee or the Revenue. It is open to the assessee to change the classification adopted earlier and follow a classification as per their own understanding for a later period. I agree that there is no estoppels on classification but any switchover should be legally justified based on practice and procedure. In the instant case the importer have deliberately changed the classification of the subject goods (imported by then and classified differently by them earlier) as per their own convenience and availed undue benefit of Notification No. 24/2005-Cus (S.N. 21) dated 01.03.2005. Through this deliberate act the importer noticee have rendered themselves liable for penalties as proposed in the Show Cause Notice."

4.3 From the reading of the impugned order reproduced above it appears that order is just written like an essay on classification of goods. It do not even records what show cause notice says and renders a finding on the issues raised in the show cause notice on the basis of the submissions made by the noticee. The decisions of the CESTAT relied by the Appellant in their own case upholding the order of Commissioner (Appeals) referred in the show cause notice has been ignored completely.

4.4 Show cause notice records as follows:

"4.2 The importer did not accept classification under CTH 8415 and requested to accept payment of duty Under Protest to continue meeting the requirement of their customer and requested to release the consignment Accordingly, the item in question, namely "Resistor Blower" declared at S Nos. 2, 38, 40, 53 & 58 of the said Bill of Entry No. 6023483 dated 18.07.2016 was assessed under CTH 84159000 of the Customs Tariff Act, 1975 as part of Auto Air Conditioning system attracting Customs duty G 10% + 12.5% + 2% + 1% + 4% and appropriate duty was paid by the said importer before clearance thereof.

4.3 And whereas on being asked to provide details of earlier import of the -item "Resistor Blower" made by M/s. Subros Ltd. from ICD-Dadri from different ports during the FY 2012-13 to 2016-17 (up to 25.07.2016) under CTH 85334090of. the Customs Tariff Act, 1975 with benefit of Notification No. 24/2005-Cus (S.N. 21) dated 01.03.2005 by the Appraising Group vide letter C.No. I(30) Cus/ICD-DD/ Classi/Subros/119/2016 dated 27.07.2016 (RUD-4), the party vide letter dated 29.07.2016 (RUD-5) sought time till 10.08.2016 for submission of relevant data. The party vide two letters both dated 01.08.2016 (RUD-6 & RUD-7) submitted that they had received a communication from the office of the Commissioner (Appeals) vide OIA No.D-II/994/647/2016 dated 12.07.2016 in - their favour allowing classification of Rcsistor Blower under CTH 85334090 and declincd to provide the data of imports of resistor blower for earlier period. In the matter, it has, however, been informed by the Assistant Commissioner Review), ICD, Patparganj & Other ICDs, Delhi vide letter dated 08.03.2017 RUD-8) that on being aggrieved; the department has filed an appeal before the Hon'ble CESTAT against OIA No. D-I1/994/647/2016 dated 12.07.2016 The party vide letter dated 03.08.2016 (RUD-9) requested to allow clearances of all' future shipments containing Resistor Blowers on duty payment under protest till the time the issue is finally concluded. Accordingly, after 18.07.2016, the said goods were cleared classifying them under CTH 84149090 and the importer paid duty under protest and got cleared the goods. The party vide letter dated 12.08.2016 (RUD-10) further sought time till 30.08.2016 to provide the requisite data on the ground that their concerned person was suffering with fever. In response to the letter dated 28.03.2017 (RUD-11) of the Appraising group, the party vide letter dated 31.03.2017 (RUD-12) further sought 10 days time, and vide letter 13.04.2017 (RUD-13) finally provided the relevant data of the FY 2012-13; 2013-14; 2014-15; 2015-16, 2016-17 and 2047 till date

4.4 It is also observed that the Hon'ble CESTAT, New Delhi vide Final Order No. C/A/53719-53720/2016-CU(DB) dated 23:09.2016 in case of M/s Sandan Vikas India Ltd. after partly allowing appeals of the concerned party has held that *appropriate classification of the item "Resistor Blower" is under Chapter Sub-Heading 84159000 of the Customs Tariff Act, 1975. The Commissioner (Appeals)'s order No. OIA No. D-II/994/647/2016 dated 12.07.2016 is no more applicable as a higher authority i.e. Hon'ble Tribunal has subsequently passed an order No. C/A/53719-53720/2016-CU(DB) dated 23.09.2016 confirming classification of said item as part of air- conditioning machine under CTH 84159000 of the Customs Tariff Act, 1975."*

4.5 The appeal filed by the Revenue against Order in Appeal D-II/994/647/2016 dated 12.07.2016 has been dismissed by the Final Order No. 58389/2017, dated 12-12-2017 of CESTAT, New Delhi observing as follows:-

"6. The impugned order examined the classification in detail. Regarding reliance placed by the Revenue on the opinion given by the Department of Electronics and Information Technology, New Delhi, we note that the opinion stated that the product containing number of resistors network cannot be classified as a resistor. We find that applying the principles for classification as explained by HSN the said opinion is not relevant. HSN explains the scope of resistor falling under CTH 8533. The HSN note states that converter consisting of number of resistor with necessary switching arrangement still continue to be classified under 8533. It is also stated that certain resistor may be fitted with number of terminals to be included in the circuit. Switching or terminal arrangement for keeping in required combination of resistor into the circuit are also considered for classification under 8533 only. Regarding the second part of the opinion by the Depart of Electronics, we note that the fact is not contested that the present resistor are used in automobile only. The point of dispute is whether such usage will determine the classification of the product or it should be by its nature as resister.

7. Reference to Section Note 2(a) and 2(b) has been made in the case. We note the Hon'ble Supreme Court in CCE vs. Delton Cables Ltd. -2005 (181) ELT 373 (SC) = 2005-TIOL-190-SC-CX held as below:

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

"(a) Parts which are goods included in any of the headings of Chapter 84 or Chapter 85 (other than Heading Nos. 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 No. 84.79

or Heading No. 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 Heading Nos. 85.17 and 85.25 to 85.28 are to be classified in Heading 85.18."

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) 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).

5. In our opinion, the Tribunal erred in wholly ignoring Section Note 2(a) and only considering the applicability of 2(b). The decision is, therefore, erroneous and we, accordingly set it side."

8. Further, similar view has been held by the Apex Court in Secure Meters Ltd. vs. CC, New Delhi -2015 (319) ELT 565 (SC) = 2015-TIOL-100-SC-CUS. The Supreme Court held that 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, which is 9013. The Apex Court held that the said item cannot be classified under heading 9038 as parts of electricity supply meter.

9. Impugned order relied on the Section Note 2(a) of Section 16 and Rule 3(a) of Tariff Classification General Rules of Interpretation for arriving at a finding. We note that application of Note 2(b) can be resorted to only after examining and exhausting Note 2(a). The present case, Note 2(a) has relevance and the impugned order correctly following the said Section Note alongwith explanation given under HSN to classify the resistor under Chapter 85. We find no infirmity in such finding. Accordingly, the appeal by Revenue is dismissed."

4.6 This decision has been again followed in the case of Appellant as reported at [2018 (363) ELT 849 (T-Del)]

4.7 As the show cause notice itself records that issue involved in the matter has been decided in the favour of the Appellant by the above referred order in appeal, which has been upheld by the CESTAT as per order referred in para 1 above, we do not find any merits in the impugned order which on merits decides the issue contrary to this order of the tribunal in the Appellant own case.

4.8 As there is no merits in the order of demand, the penalties imposed under section 112 (a) and 114A are also set aside along with the demand of interest under Section 28AA.

4.9 As we are setting aside the penalties imposed under Section 114A the appeal filed by Revenue becomes in-fructuous as same has been filed for enhancing the penalty imposed by adding interest amount to penalty imposed. However, we point out that taking note of the decision of Karnataka High Court in the case of Sony Sales Corporation [2021 (376) E.L.T. 472 (Kar.)] a coordinate bench in which Member (Tech) was party had dismissed similar appeals filed by the Revenue in case of Commissioner, Customs, Noida V/s M/s Vikas Globalone Ltd. (Tri.All) in Customs Appeal No.70562 of 2020 having Final Order No.70150 of 2025. Relevant para of the judgment are reproduced below:-

> *"The Revenue has relied on the CBEC Circular No. 61/2002–CUS dated 20.09.2002 clarifying that penalty under Section 114A of the Act should be equivalent to duty and interest both and therefore, the Adjudicating Authority has erred in not imposing penalty on the interest amount also. We do not agree with the submissions of the Revenue in view of the decision of the Karnataka High Court in* ***Sony Sales Corporation 2021(376) ELT 472(Kar.)*** *interpreting the provisions of Section 114A to say that the expression used is "or" and not "and" which is not interchangeable. The observations of the Court are quoted below:-*
>
> > *12. The aforesaid rule of statutory interpretation was referred to by Constitution Bench of the Supreme Court in Indore Development Authority v. Manohar Lal and Others, AIR 2020 SC 1496. From perusal of the relevant extract of Section 114A, it is evident that the language employed by the Legislature is plain and unambiguous and the provision contains a positive condition with regard to levy of penalty equal to duty or interest and does not contain any negative condition. The expression used is „or" which is disjunctive between duty or interest and further use of expression as the case may be clearly suggest that aforesaid provision refers to two different persons and two different situations viz., one in which a person will be liable to duty and in other he may be liable to pay interest only and provides that in both the situations the person liable to duty would be liable to penalty*

equal to duty and person liable to interest would be liable to penalty equal to interest. Therefore, in view of law laid down by Constitution Bench of Supreme Court, the word „or" cannot be interpreted as „and".

13. So far as reliance placed by Learned Counsel for the appellant on the clarification issued by Central Board of Excise and Customs dated 20-9-2002 is concerned, suffice it to say that the aforesaid clarification cannot be contrary to the plain language of the provision. For yet another reason, no interference is called for as the Tribunal has taken a similar view in the case of B. Suresh Vasudev Baliga (supra) and there is no material on record to show that the aforesaid order was challenged by the Revenue. Therefore, in the facts of the case, the view taken by the Tribunal otherwise also binds the Revenue."

6. The principle of law settled by the Hon'ble Karnataka High Court and subsequently followed by the Tribunal in the case of ***Commissioner of Customs, Noida Versus M/s Titra Trading Pvt. Ltd Final Order No. 70087/2025 dated 24.03.2025*** *is clearly applicable to the facts of the present case and hence we do not find any infirmity in the impugned order and the same is hereby affirmed. The appeal filed by the Revenue is, accordingly dismissed."*

5.1 Appeal filed by Appellant is allowed

5.2 Appeal filed by the Revenue is dismissed.

(Operative part of the order is pronounced in open court)

Sd/-

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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