CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 26121 of 2013

(Arising out of Order-in-Appeal No. 241/2012 Cus(B) dated 21.12.2012 passed by the Commissioner of Customs: Appeals, Bangalore.)

M/s. ABB Limited,
Plot NO.4A, 5&6,
II Phase, Peenya Industrial Area,
P.B.No. 5806,
Bangalore – 560 058.

Appellant(s)

VERSUS

Commissioner of Customs,
C.R. Building,
P.B. No. 5400,
Queens Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Ms. Shradha Pandey, Advocate for the Appellant

Mr. Maneesh Akhouary, Asst. Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20580 /2024

DATE OF HEARING: 19.07.2024
DATE OF DECISION: 19.07.2024

PER : D.M. MISRA

This appeal is filed against Order-in-Appeal No. 241/2012 Cus(B) passed by the Commissioner of Customs(Appeals), Bangalore.

2. Briefly stated the facts of the case are that the appellants have imported 'AS-RD1000-DEL(TM) Power Vault(TM) Tape Drive' declaring its classification under CTH 8471 7020 and claiming benefit of Notification No. 6/2006-CE dated 01.03.2006 with 'nil' rate of additional duty of Customs under Section 3 of Customs Tariff Act, 1975. A show-cause notice was issued to the appellant by the Assistant Commissioner of Customs, Air Cargo Complex, Bangalore, alleging that the imported goods being magnetic tape drive/ cartridge tape drive attracting classification under CTH 8471 7040 / 8471 7050, accordingly the benefit of Notification No. 6/2006-CE dated 01.03.2006 (Sl.No.17) is inadmissible and proposal recovery of the duty amounting to Rs.22,440/- with interest and penalty. The said show-cause notice was adjudicated and the Bill of Entry No. 368626 dated 16.02.2007 was assessed classifying the goods under CTH 8471 7040/ 8471 7050 and demand of duty of Rs.22,440/- was confirmed under Section 28 of the Customs Act, 1962 with applicable interest and penalty of Rs.22,440/- was imposed under Section 114A of the Customs Act, 1962. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn rejected their appeal holding that the correct classification of the impugned goods under a different sub-heading i.e. CTH 8471 7030 as "removable disc drive". Hence, the present appeal.

3. At the outset, the learned advocate for the appellant has submitted that the appellant has imported parts of AS-RD1000-

DEL™TAPE DRIVE of computers including hard disk drives which were chargeable to 'nil' rate of additional duty entitled for exemption from CVD as per Serial No. 17 under Notification No. 06/2006-CE dated 01.03.2006. The goods were assessed and cleared for home consumption as per the RMS system. They were issued with a show-cause notice on 05.09.2011 proposing its classification under two alternate headings namely 8471 7040 / 8471 7050 as "magnetic tape drive/ cartridge tape drive" .

3.1 She has submitted that the imported goods viz. Power vault AS-RD1000-DEL(TEM) Power Vault(TM) does not comply traditional entry level and low-end tape. She has submitted that the goods are classifiable under CTH 8471 7020 of the CTH 1975. In support, she referred to the judgment of this Tribunal in the case of ***Manoj Gupta Vs. CC, ACC, Mumbai*** [2017 (355) E.L.T. 302 (Tri-Mum)] & ***CC(Imports), Mumbai Vs. IBM India Pvt. Ltd.*** [Final Order No. A/87379/2019 dated 20.09.2019]. Further, she has submitted that the show-cause notice issued to them was vague as the classification was proposed by the Revenue under two alternate sub-headings viz. 8471 7040/ 8471 7050. The learned Commissioner appeals has classified the same under a different Chapter sub-heading 8471 7030, which is never alleged in the show-cause notice, hence beyond the scope of impugned show-cause notice; hence not sustainable. In view of the judgment of the Hon'ble Supreme Court in the case of **CC, Mumbai Vs. Toyo Engineering India Ltd., [**2006 (201) E.L.T. 513 (S.C.**)], Warner Hindustan Ltd. Vs. CCE, Hyderabad**

[1999 (113) E.L.T 24 (S.C.)] and ***R. Ramdas Vs. Joint Commissioner of C.Ex. Puducherry*, [**2020-VIL-705-MAD-ST]**.**

4. Learned Authorised Representative for the Revenue reiterated the findings of the learned Commissioner (Appeals).

5. Heard both sides and peruse the records.

6. The undisputed facts are that the appellant had filed a Bill of Entry No. 368626 on 16.02.2007 declaring their product as AS-RD1000-DEL(TM) Power Vault(TM) and classified under CTH 84717020 as hard disk drive claiming exemption from CVD under Notification No. 06/2006 CE dated 01.03.2006. The adjudicating authority has confirmed the classification under two alternative headings CTH 8471 7040/ 8471 7050 as magnetic tape drives. On appeal, the learned Commissioner(Appeal) has classified it under a different heading viz. 84717030 as removable disk drives, which is beyond the scope of show-cause notice. The principal contention of the learned advocate is that since the classification arrived at by the learned Commissioner (Appeals) in the impugned order is beyond the scope of the show-cause notice; therefore, the same cannot be sustained. In support, she referred to the judgment of the Hon'ble Supreme Court in the case of ***CC, Mumbai Vs. Toyo Engineering India Ltd.***(supra) and warner Hindustan Ltd. Vs. CCE (Supra).

7. We find force in the argument of the learned advocate for the appellant. As the show-cause notice proposed two alternate headings for classification of the imported goods AS-RD1000-

DEL(TM) Power Vault(TM) which itself is vague, the Learned Commissioner (Appeals) directed the classification under the different heading 8471 7030 never alleged in the show-cause notice nor adjudicated by the original authority, hence beyond the scope of the show-cause notice, and accordingly bad in law. In view of the principles of law levied down by the Hon'ble Supreme Court in Toyo Engineering India Ltd. case. Besides, we find that the issue on merit has been considered by the Mumbai Bench in M/s. IBM India Pvt. Ltd.'s case(Supra) and the goods in question has been held to the eligible to the benefit of Notification No.06/2006 CE dated 01.03.2006.

8. In the result, the impugned order is set aside. Appeal is allowed with consequential relief. if any, as per law.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

Tr/Raja