

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO.20005 OF 2018

(Arising out of Order-in-Appeal No.777-778/2017 dated 12.10.2017
passed by the Commissioner of Customs (Appeals), Bangalore)

M/s. Acer India Pvt. Ltd.,

Embassy Heights, 6th Floor,
No.13, Magrath Road,
Bangalore-560 025.

Appellant(s)

VERSUS

Commissioner of Customs-

BMTC Building, Above BMTC Bus Stand,
Domlur, Bangalore.

Respondent(s)

APPEARANCE:

Ms. Purvi Asati and Shradha Pandey, Advocates for the Appellant
Mr. Maneesh Akhoury, Asst. Commissioner (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO,
MEMBER (TECHNICAL)**

Final Order No. 20065 /2026

DATE OF HEARING: 30.07.2025

DATE OF DECISION: 27.01.2026

PER : D.M. MISRA

This appeal is filed against Order-in-Original No.888/2016 dated 31.08.2016 passed by the Commissioner of Customs, Airport & Air Cargo Complex, Bangalore.

2. Briefly stated the facts of the case are that the appellant are engaged in the import of items declaring as parts of computer through Air Cargo Complex, Bangalore claiming its classification under CTH 84733099 with BCD 'NIL'. They have filed Bill of Entry No.8065856 dated 21.01.2015 and invoice

dated 13.01.2015 issued by M/s. Acer Service Corporation, USA. Since the appellant had classified the said product under CTH 84733099, objection was raised by the Assessing Officer; the appellant had changed the classification and discharged duty of Rs.8,15,196/- for the past clearances from November 2013 to December 2014 voluntarily. A show-cause notice was later issued on 21.12.2015 proposing change of classification to CTH 85076000 / 85078000, recovery / appropriation of duty paid, with proposal for penalty. On adjudication, the demand of differential duty amounting to Rs.7,43,448/- was confirmed with interest and amount paid by them was appropriated; penalty of Rs.1.00 lakh under Section 112(a) and penalty of Rs.50,000/- under Section 114AA of the Customs Act, 1962 were imposed. Hence the present appeal.

3.1. At the outset, the learned advocate for the appellant has submitted that the adjudicating authority has confirmed the demand of Rs.7,43,448/- by invoking extended period of limitation in respect of clearances made against Bills of Entry filed during the period November 2013 to December 2014 alleging that the appellant has misdeclared the imported item Lithium-ion batteries declaring its classification under CTH 84733099 as 'Parts of computers' instead of CTH 85076000 / 85078000, which specifies that 'Lithium-ion / other accumulators'. They have submitted that claim of classification under a particular head in the Bill of Entry is a matter of belief on the part of the assessee and cannot be interpreted as misdeclaration. In the present case, the appellant had provided the correct description of the goods in the Bill of Entry as 'BT.00603.041 BTY PACK LI+6C Sanyo (Battery), (computer parts)'. The appellant was under a *bona fide* belief that the classification of the goods i.e. 'Lithium-ion battery' is under CTH 84733099; declared accordingly and cleared without payment of BCD. In support, they referred to the following judgments:

- i. Northern Plastic Ltd. Vs. Collector of Customs & Central Excise [1998(101) ELT 549 (SC)]
- ii. Densons Pultretaknik Vs. CCE [2003(155) ELT 211 (SC)]
- iii. CC(Imports), Chennai-I Vs. GM Pens International [2009(247) ELT 159 (Mad.)]
- iv. Lewek Altair Shipping Pvt. Ltd. v. CC – 2019 (366) E.L.T. 318 (Tri.-Hyd.) affirmed by Supreme Court in 2019 (367) ELT A328.
- v. Sirthai Superware India Ltd. v. Commissioner of Customs, 2020 (371) E.L.T. 324 (Tri.-Mumbai)
- vi. Shashi Industries v. The Commissioner of Customs, Bangalore, 2024 (12) TMI 169 - CESTAT BANGALORE
- vii. Suntec Agri Equipment (India) Pvt. Ltd. v. The Commissioner of Customs, Bangalore, 2025 (2) TMI 752 - CESTAT BANGALORE
- viii. Narayana Hrudayalaya Pvt. Ltd. Versus The Commissioner of Customs, Bangalore, 2024 (10) TMI 63 - CESTAT BANGALORE
- ix. Hikoki Power Tools India Pvt Ltd and Shri Dattatreya Joshi Vice President & Company Secretary Versus Commissioner of Customs, Bangalore, 2024 (3) TMI 137 - CESTAT BANGALORE

3.2. Rebutting the submission of the learned AR for the Revenue through their written submissions, it is contended that the Bill of Entry dated 21.01.2015 pertains to the period not covered by the period mentioned in the show-cause notice and hence, not applicable to the present case. Further, countering the argument of the Department that all the Bills of Entry were subjected to assessment under RMS system, she has submitted that one Bill of Entry has been assessed after verification of the details of import and assessed accordingly. Even if it is cleared through RMS system of assessment, no *mens rea* can be attributed to the assessee in view of the judgment in the case of D and M Building Product Private Limited Vs. CC, Bangalore [2019(370) ELT 1183 (Tri. Bang.)]. Further, they have submitted that since the issue in hand is interpretation of relevant entry under CTA, extended period cannot be invoked. The judgment cited by the learned AR for the Revenue, i.e. ACD Communication Pvt. Ltd. Vs. CC, Chennai [2011(263) ELT 744 (Tri. Mad.)] is not applicable since the product therein was declared differently than the classification directed.

4. Learned AR for the Revenue has reiterated the findings of the learned Commissioner(Appeals). He has submitted that the appellant were clearing the goods by filing Bills of Entry under Accredited Client Programme (ACP)/self-assessment which indicates that their facilitation level of clearance of goods is without assessment and examination. They are required to maintain high-levels of compliance in view of the Circular No.42/2005-Customs. This procedure has been inserted w.e.f. 01.08.2011 after making suitable amendment to various provisions of Customs Act. Self-assessment enjoins the importers to mention the correct value, classification, description of goods, exemption notifications etc. and self-assess the duty accordingly. He has referred to the judgment of this Tribunal in the case of ACD Communication Pvt. Ltd. (supra), which has been later upheld by the Hon'ble Supreme Court reported as 2014(301) ELT A14 (SC). Therefore, invocation of extended period in confirming demand for past period and imposition of penalty is justified.

5. Heard both sides and perused the records.

6. Learned advocate for the appellant has not disputed the classification of the imported items 'BT.00603.041 BTY PACK LI+6C Sanyo (Battery), (computer parts)' which has been held to be classifiable in the impugned order under CTH 85076000 / 85078000 instead of CTH 84733099 as declared / claimed by the appellants in their respective Bills of Entry pertaining to the past clearances for the period 25.11.2013 to 26.12.2014. The learned advocate for the appellant has vehemently argued that they have clearly described the description of the imported items as in the respective Bills of Entry declaring, under a bona fide belief, its classification under CTH 84733099 and clearances were allowed by the Customs accepting the said classification. She has submitted that along with the Bills of Entry, the

appellant had also filed the import invoices, technical write-up etc. as and when demanded by the Department. She has submitted that all the Bills of Entry listed in the show-cause notice against which the goods cleared were not subjected to RMS but one Bill of Entry was assessed after taking note of the classification declared by the appellant and allowed to be cleared without objection. It is her contention that no facts have ever been suppressed from the Department nor misdeclared claiming classification under the CTH 84733099 even though the Department later concluded its classification as under CTH 85076000 / 85078000, which the appellant had accepted.

7. We find merit in the contention of the learned advocate for the appellant. On going through the sample Bill of Entry for the relevant period enclosed with the paper book, we find that the appellant had declared the description of the product as 'BT.00603.041 BTY PACK LI+6C Sanyo (Battery), (computer parts)' and the commercial invoice enclosed at page 53 of the paper book conforms to the battery reference number indicating that there is no misdeclaration as far as the description of the imported goods are concerned. In these circumstances, we find that the ratio laid down by the Hon'ble Supreme Court in the case of Northern Plastic Ltd. (supra) is squarely applicable to the facts of the present case. Their Lordships held that when an appellant provides full and correct particulars as regards the nature and size of the goods, it is difficult to believe that they have misdeclared with a dishonest intention for evading payment of CVD. Consequently, their Lordships held that the appellant had not misdeclared the imported goods either by making a wrong declaration as regards to the correct classification of the goods or by claiming benefit of an exemption which are not found to be applicable to the imported goods. Similarly, this Tribunal in the case of Hikoki Power Tools India Pvt. Ltd. (supra) held as follows:-

14. The Ld. Commissioner in the impugned order confirming the demand for extended period has observed that the description of the product in the relevant Bills of entry is declared as 'Engine Brush Cutter', or Brush Cutter, or Brush cutter (Engine). Further, he has held that from the explanatory notes, it is clear that these goods are portable tools or for working in hand, but nowhere in any of the documents, the appellant declared this vital information that the imported goods are portable tools for working in hand. Non disclosure of this vital fact during the self-assessment era, post 2011, resulted into suppression of fact. Further, he has observed that nondisclosure of these facts do not support the defence of the appellant that the goods were examined and examination reports produced.

15. We find that the differential duty of Rs.93,37,120/- has been demanded, as per annexure-1 to the show cause notice for the period 18.11.2009 to 28.11.2013 for clearance of 6765 numbers of 'Engine Brush cutters' cleared against 116 Bills of Entry. The contention of the appellant is that they have placed all the necessary materials, including the catalogue of the said machines at the time of assessment. The goods were physically examined by the assessing officer and thereafter allowed to be cleared on payment of applicable duty. Since the goods were meant to be used for agricultural purposes, they classified it according to their understanding under CTH 84322990. We find that the appellant declared the description of the goods correctly all along during the said period. Also, the goods were examined and assessed by the Department. Once the catalogue has been submitted by the appellant during the course of assessment, therefore, it is the responsibility of the Department to ascertain from the catalogue and description its classification under the appropriate heading. This Tribunal has consistently held that once the description of the goods is correctly disclosed, wrong classification of the said goods on the basis of description cannot be the basis for invoking extended period of limitation. Also, it has been held in a series of cases that merely because the goods are not classified correctly under the appropriate heading by an assessee even though all facts are disclosed to the Department, the allegation of misdeclaration or suppression of fact cannot be invoked for recovery of duty for the past period. In our view, it is not necessary for the appellant to disclose on the relevant bills of entry that the goods are meant to be used as portable hand tools; the basis of classification as per explanatory notes of HSN. The stray cases of classification of the imported goods in five bills of entry under CTH 84678900 by the appellant, in our view, cannot lead to the conclusion that in other bills of entry, the goods were declared under wrong heading knowingly and to suppress the correct classification. The explanation furnished by the appellant that the mistake occurred when other goods of the same heading were imported along with the Brush cutters seems to be reasonable. Thus, invoking of extended period cannot be sustained and hence the demand is barred by limitation. Consequently, the penalties on the Appellants not sustainable.

8. Following the aforesaid precedent, we are of the view that the correct classification of the impugned goods is CTH 85076000 / 85078000; however, invocation of extended period

of limitation is bad in law in absence of misdeclaration of the description of the goods; merely declaring classification under incorrect heading of the Customs Tariff Act, later changed by the Department would not invite penal provision. Consequently, imposition of penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 also cannot be sustained, which are set aside. Appeal is disposed of accordingly.

(Order pronounced in Open Court on 27.01.2026)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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