

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

E-HEARING

CUSTOMS APPEAL NO. 52330 OF 2019

[Arising out of the Order-in-Appeal No. IND-EXCUS-000-APP-076-18-19 dated 19/06/2019 passed by Commissioner (Appeals), Customs, CGST & Central Excise, Indore (M.P.).]

M/s Shakti Pumps India Ltd.

.....Appellant

Plot No. 401, 402 and 413, Industrial Area,
Sector – III, Pithampur,
Distt. Dhar (M.P.).

Versus

**The Commissioner,
CGST & Central Excise,**

....Respondent

Manik Bagh Palace, Post Box No. 10,
Indore (M.P.).

**CUSTOMS MISCELLANEOUS APPLICATION NO. 50313 OF
2024**

(ON BEHALF OF THE APPELLANT)

APPEARANCE:

Shri T. Viswanathan, Shri Akhilesh Kangria and Ms. Madhura Khandekar, Advocates for the appellant.

Shri Rakesh Kumar, Authorized Representative for the Department

CORAM:

HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 58731/2024

DATE OF HEARING : 04.07.2024

DATE OF DECISION: 27.09.2024

P.V. SUBBA RAO

M/s Shakti Pumps India Limited¹ filed this appeal to assail the order-in-appeal dated 19.06.2019² passed by the

1. appellant

Commissioner (Appeals), Central Goods and Service Tax and Central Excise, Indore, whereby he upheld the order-in-original dated 21.12.2018 passed by the Joint Commissioner and dismissed the appeal filed by the appellant. The Joint Commissioner had decided proposals made in the show cause notice³ dated 21.09.2020. The operative part of this order is as follows :-

"(i) I order that the Bill of Entry No. 8655149 dated 19.03.2015 should be finally assessed, classifying the above referred imported goods under Chapter Head 85044010.

(ii) I order for denial of the benefits under Notification 24/2005-Customs dated 01.03.2015, Notification 12/2012-CE dated 17.03.2012 (Sl. No. 332 read with item No. 11 of list 8) and Notification 21/2012-Cus (Sl. No. 1) dated 17.03.2012.

(iii) I confirm the demand of total Customs duty of Rs. 11,64,417/- (Eleven Lacs, Sixty four Thousand, Four Hundred and Seventeen only) in terms of the provisions of section 28 of the Customs Act, 1962. The customs duty of Rs. 8,52,939/- is already paid by the party, against the above demand. I order for appropriation of the same.

(iv) I order for recovery of interest on differential duty from the party under section 28 AA of the Customs Act, 1962.

(v) I impose a penalty of Rs. 11,64,417/- (Eleven Lacs, Sixty four Thousand, Four Hundred and Seventeen only) upon the party under provisions of Section 114A of the Customs Act, 1962".

2. The facts which led to the issue of the impugned order are that the appellant filed the Bill of Entry dated 19.03.2015 to clear goods described as "Solar Pump Inverter – VFD". It

2. impugned order
3. SCN

classified the goods under Customs Tariff Item⁴ 8541 50 00 and claimed benefit of exemption Notification No. 24/2005-CUS (Sl. No. 23), Notification No. 12/2012-CE and Notification No. 21/2012-CUS resulting in assessment of nil duty on the imported goods. The goods were examined by the department and it was found that the Solar Pump Inverter merits classification under Chapter Heading 8541 and was chargeable to appropriate amount of duty. Pre-notice consultations between the department of the appellant could not resolve the issue. Therefore, on 31.03.2015 the appellant furnished a provisional duty bond with respect to the Bill of Entry and paid duty under protest. Based on the provisional assessment, the goods were given out of charge on 01.04.2015 and samples were sent to M/s SGS Institute of Technology and Science, Indore for their expert opinion. They opined that the imported goods were electric inverters. A copy of the test report was also provided to the appellant and SCN dated 21.09.2015 was issued proposing to finally assess the imported goods under CTI 8504 40 10 and denying the benefits of the exemption notifications claimed by the appellant as they were not available for the goods classifiable under this CTI. Differential duty and interest were demanded and penalty under section 114A of the Customs Act was proposed to be imposed. The appellant had, in their written reply, and during personal hearing, resisted the proposals in the show cause notice.

4. CTI

However, the Joint Commissioner passed the order-in-original as indicated above, which decision has been upheld by the Commissioner (Appeals) in the impugned order.

3. Aggrieved, the appellant filed this appeal before us.
4. Learned counsel for the appellant made the following submissions :-

(i) The demand could not have been confirmed under section 28 of the Customs Act before finalizing of provisional assessment and, therefore, the entire demand is bad in law.

(ii) The imported goods are correctly classifiable under CTI 8541 50 00 because Heading 8541 covers semi-conducted devices into photo sensitive devices. Solar Power Generating Systems convert sunlight into electricity, which however, produce any form of direct current and under low voltage. The Solar Pump Inverter – VFD maintains the output frequency which is necessary for successful operation of water pumping systems.

(iii) This is not just an inverter, but it also modulates the frequency of the electricity and for this reason it is also known as frequency inverter. Thus, the imported VFD are not conventional inverters and are not classifiable under CTH 8504.

(iv) The appellant is eligible for complete exemption from payment of duty as the goods fall under Heading 8541.

(v) The original authority passed the order finalizing the assessment after issuing a show cause notice calling upon the appellant to explain why the Bill of Entry should not be finalized in a manner. No penalty is imposable in cases involving finalization of provisional assessment under Section 18 of the Customs Act and the consequential demand of duty.

(vi) The conditions for imposing penalty under Section 114A of the Customs Act are the same as the conditions for invoking extended period of limitation under Section 28 of the Customs Act namely, collusion, wilful misstatement or suppression of facts with an intent to evade payment of duty. The appellant did not withhold any information from the department. Therefore, it is evident the appellant acted in a bonafide manner and even for this reason, no penalty can be imposed upon the appellant.

5. Learned authorized representative for the Revenue vehemently supported the impugned order and asserted that it calls for no interference.

6. The submissions advanced by the learned counsel for the appellant and the learned authorized representative for the Revenue have been considered.

7. The four questions to be decided are :-

- (i) Is the Solar Pump Inverter – VFD classifiable under CTI 8541 50 00 as claimed by the appellant or under CTI 8504 40 90 as held in the impugned order ?
- (ii) When the assessment is finalized through the order-in-original, can a demand be also raised invoking the extended period of limitation under section 28 of the Customs Act in the same order ?
- (iii) Is any penalty imposable under section 114A of the Customs Act upon the appellant ?
- (iv) Is the appellant are eligible for exemption from payment of additional duty of customs ?

8. **Classification** : It is not in dispute that the goods which were imported by the appellant were “Solar Pump Inverter – VFD”. It is the case of the appellant that this is a semi-conductor device and falls under “other semi-conductor devices” and will be eligible for the exemption notifications. It is the case of the department that the imported good is an inverter and it should be classified as such. The case of the appellant is that Solar Pump Inverter – VFD is a photo voltaic pump controller and it ensures that the output frequency is as required. Therefore, it is not just an inverter but it also

modulates the frequency of the electricity. Therefore, it cannot be called an inverter and it should only be called a semi-conductor device because it functions using a semi-conductor.

9. We have considered submissions on both sides on question of classification.

10. The functions of the imported goods are not in dispute. Solar Panels generate electricity in the form of direct current at low voltage. The Solar Pump Inverters convert this low voltage direct current received from the solar panels into alternate current of the requisite voltage. This is similar to the inverters which are used in homes as a back up in case of power cuts. When the main power is on, the inverter uses it to charge the 12-voltage battery. When the power is off, it supplies the electricity from the battery to the home converting it into alternating current of the required voltage. This function of the inverter in the imported goods is not in dispute. The submissions by the learned counsel for the appellant is that the Solar Power inverter also has certain other functions including monitoring and ensuring that the correct frequency of the electricity is generated. Therefore, according to the learned counsel, it cannot be called an inverter. Since it uses semi-conductors it should be classified as "other semi-conductor device".

11. Goods are to be classified based on their use. Often, there can be more than one use for the same good or

machine. What needs to be seen is what is the intended use of the good although it may have additional functions as well.

12. One of the components which are used in most modern goods are the semi-conductors devices (such as chips). Semi-conductor, by definition, is one which allows the electricity to pass in one direction but not in the other. The earliest semi-conductors were in the form of vacuum tubes, such as diodes and triodes. These were then replaced with solid state semi-conductors or transistors which revolutionised electronics. Millions of transistors are incorporated into a very small chip such as a chip of the mobile phone, a memory card of a computer, a chip embedded in the lift, etc. Nowadays, there is hardly any modern machine which does not have some intelligent functions. These functions are performed through semi-conductor devices built into the machines. The modern automobiles, mobile phones, laptops, refrigerators, washing machines or even coffee makers all have semi-conductors in them. In fact, there will be millions of semi-conductors in each of the chips embedded in these machines. However, all of them cannot be called semi-conductor devices. What needs to be seen is the intended use of the machine. A car, for instance, is primarily an automobile although it will have several other facilities including air conditioning, music and entertainment systems, etc. The car will not become an entertainment system no matter how good or sophisticated the entertainment system is. An elevator should be classified as

such although it will have an embedded chip or board with millions of semi-conductors which gives it the required intelligence.

13. In this case, learned counsel for the appellant sought to distinguish the imported Solar Pump Inverter- VFD from other inverters saying that the VFD also ensures that the frequency of the alternate current which is produced is monitored and maintained. However, it cannot be denied that the primary function of the device is that of an inverter i.e. one which converts direct current into alternate current. Even the inverters used at homes have chips and semi-conductors and also perform several ancillary functions which enhance their utility. For instance, they sense when there is a power cut in the grid and start converting the direct current from the battery into alternate current and supplying it for household use. When the power is restored, the inverter senses it and reverses the system and starts charging the battery using the power from the grid. High quality inverters used at home also ensure that the sine wave quality of the power is good and there is no adverse affect on the devices at home or their performance. Many inverters used at home also have displays which indicate the voltage, level of charge, etc. All these intelligent functions of the domestic inverters are because of the semi-conductors embedded in them. However, they do not cease to be inverters because of these additional functions. Likewise, the "Solar pump Inverter – VFD" imported by the

appellant continues to be an inverter and must be classified as such.

14. For these reasons, we find that the correct classification of the imported goods is as inverter under CTI 8504 40 90 and not as other semi-conductor devices under CTI 8541 50 00 as claimed by the appellant.

15. The appellant's claim of the benefit of Notification No. 24/2005-CUS dated 01.03.2015, Notification No. 12/2012-CE and Notification No. 21/2012-CUS are all based on their claim of this classification. Having decided the classification in favour of the revenue, we cannot hold that the appellant will be entitled to the benefit of these notifications.

16. The next question is whether the Joint Commissioner was correct in confirming the demand under section 28 of the Customs Act. As is evident from the show cause notice and the order-in-original, the goods were assessed provisionally because there was a dispute regarding the classification of the goods. The appellant had also executed a provisional duty bond. The show cause notice proposed to finalize the assessment. The order-in-original finalized the assessment. Once the assessment is finalized, the amount of duty payable is to be determined and necessary adjustments have to be made for the duty already paid by the appellant. The question of demand under section 28 of the Customs Act does not arise under such circumstances. It needs to be noted that the

demand under section 28 of the Customs Act is a mechanism for the proper officer to reopen an assessment which has already been completed. This has to be done within a period of one year, or as the case may be five years from the relevant date. Explanation 1 (b) to section 28 of the Customs Act clarifies that the relevant date in a case where duty is provisionally assessed under section 18 of the Customs Act, is the date of adjustment on duty after the final assessment thereof or re-assessment as the case may be. The finalization in this case was completed through order-in-original passed by the Joint Commissioner. Any demand of duty under section 28 of the Customs Act in such a case will arise after the finalizing of this assessment that means after the order-in-original was passed. Until then, the assessment had not yet been completed. Therefore, while the appellant is required to pay duty as per the final assessment, no demand under section 28 of the Customs Act can be raised. Consequently, any recovery of interest under section 28AA of the Customs Act which follows the confirmation of demand under section 28 of the Customs Act also does not apply to this case.

17. Penalty of an amount equal to the amount of duty was imposed from the appellant under section 114A of the Customs Act. This section reads as follows :

“114A. Penalty for short-levy or non-levy of duty in certain cases.

- Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (2) of section 28, and the interest payable thereon under section 28-AB, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28-AB, and twenty-five per cent. of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114".

18. As is evident, section 114A of the Customs Act provides for imposition of penalty, where demand is made under section 28 of the Customs Act and such demand arose by reason of collusion or any willful mis-statement or suppression of facts by the appellant. Since section 28 of the Customs Act does not apply in this case neither will section 114A of the Customs Act.

19. In view of the above, the impugned order is modified to the extent that though the classification of the goods and the finalization of assessment of duty is upheld, the appellant is required to pay duty as final assessment. The demand under section 28, interest under section 28AA and penalty under section 114A of the Customs Act are set aside.

20. The appeal is partly allowed and the impugned order is modified to the extent indicated above. The miscellaneous application filed by the appellant is also disposed of.

(Order pronounced in open court on 27/09/2024.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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