CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO.III

Customs Appeal No.51182 of 2022

[Arising out of Order-in-Appeal No.CC(A)CUSTOMS/D-II/IMP/ICD-TKD/1507/2021-22 dated 06.01.2022 passed by the Commissioner of Customs (Appeals),New Customs House, New Delhi.]

M/s. Aska Equipments Ltd. **Appellant**
R-482, New Rajendra Nagar,
Ganga Ram Hospital Sqare, Shankar Road,
New Delhi-110 060.

VERSUS

Commissioner of Customs(Import), **Respondent**
ICD, Tughlakabad,
New Delhi-110 020.

APPEARANCE:

Shri Vaibhav Singh, Advocate for the appellant.
Shri Girijesh Kumar, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.50117/2025

DATE OF HEARING: 06.01.2025
DATE OF DECISION:31.01.2025

BINU TAMTA:

M/s.Aska Equipments Ltd. [1] has challenged the Order-in-Appeal No. CC(A)CUSTOMS/D-II/IMP/ICD-TKD/1507/2021-22 dated 06.01.2022 upholding the Order-in-Original re-classifying the goods under Customs Tariff Heading 9405 and confirming the short paid duty along with interest, confiscation under Section

[1] The Appellant

111(m) and penalty of equivalent amount under Section 114A of the Customs Act, 1962[2].

2. The appellant imported goods described as "Search Lights" through two Bills of Entry Nos.8004086 dated 11.09.2018 and 4234476 dated 02.12.2017 declaring the goods under CTH No.8511090, which covers "Other portable electric lamps designed to function by their own source of energy." The goods were described in the B/E as "10W Search Light (KB2922RF)". The total value of the imported goods was Rs.1,00,99,940/-.

3. Following an audit, the customs authorities challenged the classification of the impugned goods under the declared CTH 8513 10 90 and issued a show cause notice dated 30.12.2020, proposing that the goods were more appropriately classifiable under CTH 9405 40 10, which specifically includes "Search Lights and Spotlights". The Adjudicating Authority held that the goods, being Search Lights fall under CTH 9405, regardless of the power source, and cited Rule 3(a) of the General Rules of Interpretation[3], which stipulates that a more specific heading prevails over a general one. The differential duty amounting to Rs.15,59,326/- was sought to be recovered under Section 28(4)

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[2] The Act, 1962
[3] (GRI)

of the Act along with interest under Section 28AA. The appeal filed by the appellant was rejected by the impugned order. Hence, the present appeal.

4. Heard Shri Vaibhav Singh, learned counsel for the appellant and Shri Girijesh Kumar, learned Authorised Representative for the respondent.

5. The submission of the learned counsel for the appellant is that the correct classification of the imported goods is under CTH 85131090. According to him, the Search Lights mentioned in CTH 94054010 is connected to a permanent power supply like Search Light installed at Aircraft Operation, Spotlight and Light installed at the stage for stage lighting purpose whereas they have imported Search Light, which is designed to function by their own source of energy by a battery of 3.7 volt 5800Mah, which is installed inside a single case as mentioned in 8513. Hence, it is specifically covered under CTH85131090 and not under CTH94054010. He further submitted that the CTH851310 90 excludes the Search Light and Spot Light, which are covered under CTH 9405 40 10 having a permanently fixed light source. According to the learned counsel, the appellant was not required to submit a catalogue at the time of e-Sanchit and non-

submission thereof does not amount to suppression of facts. Referring to the rules of interpretation, he submitted that HSN meant for CTH85131090 is more specific as far as the function and use by Search Light under import is concerned, which will prevail over the generic entry as mentioned in the HSN under CTH9405410. In other words, he submitted that the Search Lights mentioned in HSN for CTH85131090 have been defined as portable electric lamps designed to function by their own source of energy and such lamps are classified under CTH85131090 only if they have their own source of current. Learned counsel challenged the invocation of the extended period of limitation and imposition of penalty, as according to him, no penalty is leviable in case of classification dispute and in support thereof, he relied on the decisions as follows:-

(i) **Digital Service Vs. CC** [4]
(ii) **Jay Kay Export Vs. CC**[5]

6. Learned Authorised Representative for the respondent/Department reiterated the findings of the Authorities below that the Tariff Heading 94054010 specifically covers Search Lights and Spot Lights, whereas the appellant had classified the "Search Light" under CTH85131090, a residuary entry for portable electric lamps functioning by their own source

[4] 2003 (154) ELT 71 CESTAT
[5] 2004 (163) ELT 359

of energy like torches and hand lamps, which are distinct from the searchlights, which are classified under a specific entry CTH 9405 40 10. Since it is a case of mis-declaration leading to short payment of duty and non-disclosure of the requisite documents, the goods have been rightly confiscated invoking the extended period of limitation. According to the learned Authorised Representative, under the self-assessment regime, the liability is on the importer to correctly classify the goods and provide all the necessary documents in support thereof, however, the appellant failed to submit the same. In the circumstances, the imposition of penalty under Section 114A is justified and the impugned order needs no interference.

7. The controversy in the entire case revolves around the classification of the imported goods, “Searchlights” under CTH 85131090, as claimed by the appellant or under CTH940540 10, as per Revenue. In order to ascertain the classification, the relevant entries along with the Explanatory Notes are quoted below:-

> **CHAPTER HEADING 8513:**
> PORTABLE ELECTRIC LAMPS DESIGNED TO FUNCTION BY THEIR OWN SOURCE OF ENERGY (FOR EXAMPLE, DRY BATTERIES, ACCUMULATORS, MAGNETOS), OTHER THAN LIGHTING EQUIPMENT OF HEADING 8512.

Explanatory notes under Chapter Heading 85.13 of HSN are reproduced as under:-

"This heading covers portable electric lamps designed to function by means of a self-contained source of electricity (e.g., dry cell, accumulator or magneto).

They comprise two elements (i.e., the lamp proper and the source of electricity) which are usually mounted and directly connected together, often in a single case. In some types, however, these elements are separate and are connected by wires.

The term "portable lamps" refers only to those lamps (i.e., both the lamp and its electricity supply) which are designed for use when attached in the hand or on the person, or are designed to be attached to a portable article or object. They usually have a handle or a fastening device and may be recognised by their particular shapes and their light weight. The term therefore excludes lighting equipment for motor vehicles or cycles (heading 85.12), and lamps which are connected to a fixed installation (heading 94.05)."

CHAPTER HEADING NO.9405:

LAMPS AND LIGHTING FITTINGS INCLUDING SEARCHLIGHTS AND SPOTLIGHTS AND PARTS THEREOF, NOT ELSEWHERE SPECIFIED OR INCLUDED;ILLUMINATED SIGNS, ILLUMINATED NAME-PLATES AND THE LIKE, HAVING A PERMANANTLY FIXED LIGHTS SOURCE, AND PARTS THEREOF NOT ELSEWHERE SPECIFIED OR INCLUDED.

Explanatory notes under Chapter Heading 94.05 of HSN are reproduced as under:-

"(1) LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE SPECIFIED OR INCLUDED

Lamps and lighting fittings of this group can be constituted of any material (excluding those materials described in Note I to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc.). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders, switches, flex and pings, transf01mers, etc., or, as in the case of fluorescent strip fixtures, a starter or a ballast.

This heading covers in particular:

(1) Lamps and lighting fittings normally used for the illumination of rooms, e.g. hanging lamps, bowl lamps; ceiling lamps; chandeliers; wall lamps; standard lamps; table lamps; bedside lamps; desk lamps; night lamps, water-tight lamps.

(2) Lamps for exterior lighting, e.g.: street lamps; porch and gate lamps; special illumination lamps for public buildings, monuments, parks.

(3) Specialised lamps, e.g.: darkroom lamps; machine lamps (presented separately); photographic studio lamps; inspection lamps (other than those of heading 85.12); non-flashing beacons for aerodromes; shop window lamps; electric garlands (including those fitted with fancy lamps for carnival or entertainment purposes or for decorating Christmas trees.

(4) Lamps and lighting fittings for the vehicles of Chapter 86, for aircraft or for ships or boats, e.g. headlamps for trains; locomotive and railway rolling stock lanterns; headlamps for aircraft; ships' or boats' lanterns. It should be noted, however, that sealed beam lamp units are classified in heading 85.39.

(5) Portable lamps (other than those of heading 85.13), e.g.,: hurricane lamps; stable lamps;

hand lanterns; miners' lamps; quarrymen's lamps.

(6) Candelabra, candlesticks, candle brackets, e.g., for pianos.

This group also includes searchlights and spotlights. These throw a concentrated beam of light (which can usually be regulated) over a distance onto a given point or surface, by means of a reflector and lenses, or with a reflector only. The reflectors are usually of silvered glass, or of polished, silvered or chromium-plated metal. The lenses are usually plano-convex or stepped (Fresnel lenses).

Searchlights are used, e.g., for anti-aircraft operations, and spotlights, e.g., for stage sets and in photographic or film studios."

8. Considering the two entries quoted above, it is clear that the Searchlights are specifically mentioned under CTH94054010, whereas CTH85131090 covers portable lamps designed to function by their own source of energy such as dry batteries accumulator magnetos. As per the basic principle, the most specific description has to be preferred to a heading providing a mere general description. The classification as claimed by the appellant under CTH 85131090 is a residuary entry as compared to CTH94054010, which is a specific entryand hence, the imported goods i.e. searchlights have been rightly classified under the latter heading.

9. It is a settled principle of law that classification has to be determined according to the terms of the Headings, Section Notes, Chapter Notes and General Rules of Interpretation and the HSN Explanatory Notes. Reference is invited to the provisions of Rule 3 of GRI providing that when the goods are prima facie classifiable under two or more headings, classification shall be affected by referring to the heading, which provides the most specific description than the heading providing mere general description. In that view of the matter, the Authorities below rightly classified the goods in terms of Rule 3(a) of GRI under CTH94054010.

10. The contention of the learned counsel for the appellant was that the Searchlights with a permanently fixed light source and connected to a permanent power supply are classifiable under CTH94054010. Considering the said arguments, we find that the interpretation placed by the appellant is not correct in view of the tariff structure under CTH94054010, which is in two parts and is bifurcated by a semicolon. The first part provides "lamps and lighting fitting including search light and spotlight and parts thereof not elsewhere specified or included". The second part is bifurcated by means of a semicolon and reads as, "illuminated signs, illuminated name-plates and the like having a permanently

fixed light source”. Thereby making the classification of searchlight independent of the phrase, “having a permanently fixed light”. Therefore, all search lights irrespective of their light source falls under CTH94054010. In other words, the phrase, “having a permanently fixed light source” applies only to the items mentioned in the latter phrase, i.e., “illuminated signs, illuminated name-plates and the like”.

11. In the present case, show cause notice was issued on the ground that the goods were more appropriately classifiable under CTH94054010. The issue, therefore, basically pertains to classification of the impugned goods, and it is a settled principle of law that mis-classification of a product is no ground to confiscate the goods or to impose penalty. The justification for penal action is maintainable only when element of fraud collusion, willfull statement or suppression of facts or violation of the provisions of the Act or Rules with an intent to evade payment of duty is present, which in the present case is not so. Reliance is placed on the decision of this Tribunal in **Biomax Life Sciences Ltd. Vs. Commissioner of Customs, Central Excise**

& Service Tax, Hyderabad-IV [6], where it has been held that no penalty is imposable when it is a matter of difference of opinion regarding classification by the assessee and by the Department. We, therefore, do not find any justification in upholding the order of confiscation and imposition of penalty.

12. We are in complete agreement with the findings arrived at by the Authorities below that the imported Searchlights were mis-classified under CTH85131090 and, therefore, the appellant is liable to pay short levy of duty amounting to Rs.15,89,326/- with interest. The order of confiscation and penalty is set aside. The impugned order is affirmed to the extent indicated above. The appeal is, accordingly partly allowed.

[Order pronounced on 31st January, 2025]

(BINU TAMTA)
Member (Judicial)

(P.V. SUBBA RAO)
Member (Technical)

Ckp.

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[6] 2021 (375) ELT 263 (Tri.-Hyd.)