IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Appeal No. C/54221/2014-CU [DB]

[Arising out of Orders in Appeal No. CC(A)CUS/D-I/I&G/343-350/2014/2014 dated 29.04.2014, passed by the Commissioner (Appeals), Customs, New Delhi]

For approval and signature:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Commissioner of Customs, New Delhi .... Appellant

Vs.

Supertron Electronics Pvt. Limited .... Respondent

Appearance:

Shri Sanjay Jain, DR for the Appellants
Shri Rupesh Kumar, Shri Ashish Batra and Shri Pravesh Bahugana, Advocate for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing: 29.12.2016

Date of Pronouncement: 06.01.2017

FINAL ORDER NO. 50134/2017-CU [DB]

Per Justice (Dr.) Satish Chandra

The Revenue is in appeal against Order in Appeal dated 29.04.2014. The brief facts of the case are that the respondent had imported "External Hard Disk Drive" and claimed exemption from CV duty under Notification 6/2006-CE dated 01.3.2006 and later, Notification 12/2012-CX dated 17.02.2012. The dispute in the present appeal is relating to classification of imported hard disk drive and its eligibility for concessional rate of CV duty. Original assessing authority has assessed the goods under tariff heading 84717030 with effective CV duty of 12% denying the benefit of Notification No. 12/2012-CX dated 17.03.2012 (Serial No. 255). On appeal, Commissioner (Appeals), vide impugned order, allowed the appeal and set-aside the assessment orders. The impugned order held that external hard disk drives are correctly classifiable under tariff heading 84717020 of the first schedule of the Customs Tariff Act.

2. In the grounds of appeal, the Revenue contended that the Commissioner (Appeals) erred in holding the external hard disk drives are eligible for CV duty concession. It is submitted that these external hard disk drives are correctly classifiable under "removable or exchangeable disk drives" under tariff item 84717030. The Revenue relied on certain references from internet to emphasize that removal or exchangeable disk drives are synonymous with portable or external disk drives. It is also submitted that external hard disk drives have additional circuits for this purpose. Removal or inter-changeable are correctly referred to "external or portable type of drives". The back-ground of exemption at the six digit level was also explained in the grounds of appeal and it was submitted that exemption notification should be strictly interpreted.

3. We have heard ld. AR for the Revenue. He elaborated the grounds of appeal. Ld. Counsel for the respondent submitted that the impugned order examined the technical aspects of the imported goods and after referring to technical specification and usage of the imported items and also to various decided case laws, the conclusion

was arrived at. The ld. Counsel also submitted the importers technical literature to reiterate the factual position recorded in the impugned order. He also submitted copy of Office Memorandum dated 05.06.2013 of Ministry of Communications and Information Technology which categorically clarified that external hard disk drive or portable hard disk drive are not exchangeable disk drives. The external hard disk drives are also to be covered under tariff heading 84717020 under eight digit HS code. The said Office Memorandum communicated the opinion of Technical Committee constituted by the department of Electronics and Information Technology to give its recommendation regarding the correct categorization of the external hard disk drive with reference to customs assessment.

4. We have heard both sides and perused the appeal records. We have also examined the samples of impugned goods as well as sample of removable or exchangeable disk drive during the course of hearing. We note that the classification of external hard disk drive assumes significance because of concessional rate of duty available to only hard disk drive not to removable or exchangeable disk drives. The Revenue considers the imported items under 84717030 whereas the impugned order by the Commissioner (Appeals) held the product under heading 84717020. The later entry is eligible for concessional CV duty. We have examined the impugned order and grounds of appeal, closely. First of all, we note that the exemption notification specifies tariff heading up to six digit only, 847170, which covers both, hard disk drive and removable or exchangeable disk drives. Further, the next column of the table for description explain the goods only as hard disk drive among many other items. On careful

consideration of the technical specification furnished, and the sample of imported items along with tariff entries and the exemption notification, we are in agreement with the findings in the impugned order. The terms hard disk drive used in the notification has not been amplified either by adding “external” or “internal”. On this simple premise alone, exemption to the said item cannot be denied. Admittedly, the imported items are hard disk drive and are meant for external use with computer or lap-top as plug-in device. They are portable hard disk drive. The contention of the Revenue that they are only removable or exchangeable disk drive, is not factually or technically correct. We have perused sample of such removal or exchangeable disk drives. They have full drive mechanism in which storage media is inserted and along with such media can be removed and inserted in computer for usage. We have also perused the technical literature of the manufacturer of the impugned goods. Further, the technical opinion given by the Ministry of Communication and Information Technology, is directly on the issue. We find that in the appeal, the Revenue contested the factual findings in the impugned order. Guided by the expert opinion of the concerned Ministry and facts recorded in the impugned order, we do not find it fit to interfere with the impugned order.

5. The appeal by Revenue is dismissed.

[Pronounced in the open Court on 06.01.2017]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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