IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 7.5.2018
Date of Pronouncement:11.05.2018

Appeal No. E/50756/2018–DB

(Arising out of Order-in-Appeal No. 204/GST/DL-APPL-II/17./CEX/2015 dated 26.12.2017 passed by the Commissioner of Central Excise (Appeals), Delhi)

CCE, Delhi-III Appellant

Vs.

S.B. Industries Respondent

Appearance

Shri R.K. Mishra, DR - for the appellant

Shri A.C. Jain, Advocate - for the respondent

CORAM:**Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No. 51781/2018

Per Bijay kumar:

The present appeal has been filled by the Revenue against the Order-in-Appeal No.204/GST/DL-Appl-II/17/ vide which the Commissioner (A) has set aside the order of adjudicating authority.

2. The brief facts of the case are that the respondent assessee M/s S.B.Industries, are engaged in the manufacture of power bank/ potable mobile charger out of imported components. For this purpose they have registered themselves with the Central Excise Department for

availing facility of import of goods at concessional rate of duty under the Notification No. 12/2012/ Customs dated 101032100 as amended. They have also got themselves registered under the Customs (Import of goods at the Concessional rate of duty for Manufacture of Excisable goods) Rules 1996 for import of inputs and parts of the mobile battery charger falling under the CFSTH 85044030.

3. The learned DR has stated that the notification No 12/2012 Customs dated 17/3/2002 at entry No 431 describes as under:

S.No.	**Chapter Heading sub-heading or tariff item**	**Description of goods**	**Standard rate**	**Addl. Duty rate**	**Condition No.**
1		3	4	5	6
431	Any Chapter	The following goods namely:-(i) parts, components and accessories for the manufacture of mobile handsets; (ii) sub-part for the manufacture of items mentioned at (i) above; (iii) parts or components	Nil	Nil	5

		for the manufacture of battery charges, PC connectivity cables, Memory cards and hand-free headphones of mobile handsets; and (iv) sub-parts for the manufacture of items mentioned at (iii) above. Explanation.- For the purpose of this entry			

In view of above he is of the view that the product manufactured by the respondent, namely, power bank is not covered under the aforesaid Notification for availing the concessional duty. The DR also states that the respondent assessee have themselves described their product under the name of ‘’ embrance’’ on their website as No-1 power bank in India and are being popularly sold on E-commerce website as power bank. Further it has been described that the power bank is designed to further the necessity of potable charger for smart phone and tablets which provides competency of 5220 mha for smart phone ,tablets and other smart devises. The DR further submits that the issue has been clarified by the Tax research unit of CBEC by their office letter CN V(85)50/CE/DI/ADJ/301/2016 dated 14/3/07 wherein it has been clarified to the respondent assessee that power bank classification falls under heading 8507 of the Customs Tariff Act and not eligible for benefit of the aforesaid exemption under the Sl. NO. 431 of Notification 12/2012 customs dated 17/3/12 during the period 2015-2016. Further as on date, it is also not eligible for the benefit of exemption under the Sl.No 430 A, Sl.No-431 and Sl.No-431A of Notification No 12/2012 Customs dated 2012. Learned DR also relied upon the decision of by the AAR in case of Delta Power Solution India Private Limited wherein it has been held that the accumulators are classifiable under chapter heading 8507 of Central Excise Tariff.

4. On the other hand, the Learned Advocate appearing on behalf of the respondent assessee submits that the order of learned Appellate Authority is correct and as per law. He has submitted that the product manufactured by the respondent is nothing but a mobile battery charger or potable mobile battery charger which is correctly available for the aforesaid mobile battery charger. He has further submitted that for the function of the power bank similar to those input charger in as much as the power bank is also used to put constant energy as mobile battery for unforeseen electrical current submit. It has several

advantage of a simple charger such as turning of the power bank with the mobile battery only used for battery is not fully charged. He would submit that the accumulator can never act as a mobile battery charger without a use of separate charger whereas the power bank is primarily used to charged mobile batteries. Therefore, the power bank is nothing but a battery is rightly classified under heading 8507800 instead of 85044030. The power bank and mobile and potable mobile charger are synonymous. In market power bank is a device which function as a potable mobile charger. The case of the department is on the basis of report of Superintendent in the Show Cause Notice that mobile charger is a device. Component of the device are mentioned on the page 34 of the appeal, he also submits that the duty exemption certificate has not been properly declare as they register is for manufacture power bank/potable mobile battery charger.

5. We have heard both sides. The basic issue is as whether the benefit of exemption Notification No 12/2012-Cus. Dated 17/3/12 is available to the respondent assessee or not. The perusal of the Notification No 12/2012 as extracted above very clearly states that the exemption is available (i) to the parts, components and accessory for the manufacture of mobile handsets. (ii) the special part of manufacture items mentioned at (i),(iii). The parts or components for the manufacture of battery charger, DC, cables, memory card and hands-

free, headphone of mobile handsets, and (iv)sub part manufacture of the items mentioned had mention on above (iii).

6. The issue has been clarified vide letter FN 354/29/2017-TRU dated 26/4/17 as per the direction of Delhi High Court in WP/Civil No-2504/16 dated 2/11/16, wherein it has been stated that ‘’the matter has been examined these power bank ments classification as a accumulator in heading 8507 of Customs Tariff Act and not eligible for benefit under Sl.No. 431 of the Notification No- 12/2012/ Customs dated 17/3/2012 during the period 2015/2016. Further as on date is also not eligible for the benefit of exemption under Sl No. 430 A ,431 and Sl.No. 431A of Notification No. 12/2012 Customs dated 17/3/12 subject to the actual user condition’’

7. The benefit of exemption is intended only for the charger for use in the manufacture of mobile handset under Sl.No. 430A of the Notification No. 12/2012 Customs dated 17/3/12 subject to the actual user condition.’’

8. The copy of aforesaid clarification has been also marked to the Principal Commissioner of Central Excise Delhi, also information. The learned Advocate for the respondent has not brought this issue before us. Also the learned Commissioner (A) has not discussed the clarification issued to the respondent assessee, at their own request, and pursuant

to High Court order. This clarification appeared to have not challenged by the Respondent Assessee.

9. In view of the above, we allow the appeal by way of Remand to the Appellate Authority to examine the classification issued by the TRU to the appellant regarding their application in the impugned matter.

(Pronounced in open Court on 11/05/2018.)

(Bijay Kumar)	(Justice Dr. Satish Chandra)
Member (Technical)	President

T.S.