

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 78836 of 2018

(Arising out of Order-in-Appeal No. KOL/CUS(Port)/AA/1319/2018 dated 16.07.2018 passed by Commissioner (Appeals), Customs House, Kolkata.)

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Kolkata, 700001)

Appellant

VERSUS

M/s. Sigma Power Product Pvt. Ltd.
(Chandi Chowk Street, 3rd Floor, Kolkata-700072)

Respondent

APPEARANCE :

Mr. A. K. Chowdhury & Mr. S. Debnath, Authorized Representative for the Appellant

Mr. H. K. Pandey, Advocate for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.76130/2024

Date of Hearing : 18 June 2024

Date of Decision: 18 June 2024

PER R. MURALIDHAR:

The Respondent has imported Solar lantern classifying the same as Solar Mini Emergency light with LED, Solar LED, solar CFL etc. The Respondents had classified the goods under Customs Tariff Heading 94055040. They were claiming the exemption under Serial No.587 of Notification No. 050/2017-cus. The Customs Department took the view that these are not Solar lanterns and classified the same under CET 85131090 and denied the exemption Notification benefit. Being aggrieved, the Respondent has filed their Appeal before Commissioner (Appeals). The Commissioner (Appeals) after verifying the documents before him, has given the following findings:-

"37. On the first issue, I find that item nos. 1,2 & 4 of invoice no. 281; item nos, 1 to 6 of invoice no. 282 ; and item nos. 1 & 2 of invoice no. 283 were broadly declared as Solar LED (Rechargeable) Lantern or Solar Mini LED rechargeable light having different models. It is reported by the Shed officials that the goods do not have any solar panel and also have one AC charging port. The appellant sought classification at tariff item 94055040, whereas

based on the findings of shed officials, it was re-determined at tariff item 85131090 by the lower authority.

37.1 I find that on the identical issue vide five Order benefit was given to the same appellant, which are as below:-

- (i) KOL/Cus(Port)/AM/033/2015 dated 30.06.2015 [para-5]; and
- (ii) Kol/Cus(Port)/AM/155 to 158/2015 dated 29.10.2015 [para-11 & 12]

37.1.1 The findings/observation of the Commissioner (Appeals), while passing the above orders are as follows:-

(i) Import items are re-chargeable lanterns along with re-chargeable Lead acid battery which can be charged by electricity and also by plugging into solar panel.

(ii) They are not fitted with solar panels which are called photovoltaic cells.

(iii) No definition is given in the Chapter Notes and Notification stating that solar lanterns should be compulsorily fitted with an in-built solar panels.

(iv) There is a separate classification for solar panels under CTH 85414011 and sold separately.

(v) The department has accepted the fact that the lanterns can also be re-charged by solar panels.

(vi) In the matter of Hazari Trading Co. Vs. CC(Import), Mumbai [2002 (149) ELT 781 (Tri-Mumbai)], Hon'ble CESTAT has held that ".....the only difference between a solar light and ordinary light is the source of energy".

(vii) In case of Bill of Entry No. 4706826 dt. 21/02/2014, the department has accepted the classification.

(viii) E-retailers like Amazon, Flipkart etc. also sell solar lanterns without solar panels.

(ix) Solar lanterns mainly use electrical power from solar energy through solar panel. This gives them classification under CTH 94055040.

(x) However, since these lanterns are also capable of charging by household electric supply they are also classifiable under CTH 85131090.

(xi) Therefore in such situations, the General Rules for the Interpretation of Import Tariff is to be applied. As per sub-rule (a) of Rule 3, classification under CTH 94055040 is correct as the goods are solar lanterns. Even if the same is not applicable then by virtue of sub-rule (C) of Rule 3 which states that when the goods cannot be classified by reference to sub rule (A) or (b), the classification is to be done under the heading which occurs last in numerical order among those which equally merit classification.

37.1.2 I have gone through the above orders, and find that issue is already decided that tariff item of such item shall be 94055040 even if, solar panel is not inbuilt.

37.2 Now the next question is why these orders were discarded by the Lower Adjudicating Authority. This issue has been discussed by the Adjudicating Authority in para-6.5 to para-6.12.

37.3 On the issue of applicability of the above five Orders, it is recorded by the Adjudicating Authority that "AC-CFS's report that the same is not applicable as the said orders were for the specific imported goods against which appeals were filed and they do not cover future consignments is a valid point as Model numbers of goods against subject Bill of Entry is different than the Model nos. or solar lanterns covered under five order-in-Appeals". I disagree with the views of the Adjudicating Authority that classification will be decided on the Model number of the goods, in fact it is feature, which is the sole criteria to decide classification. I find that point of dispute was as to whether goods without solar panel will be classified 94055040 or 85131090 and it was decided that the goods would be more appropriately classifiable under tariff item 94055040.

37.4 *It is also recorded by the Adjudicating Authority that these five orders were accepted under National Litigation Policy (involvement below monetary limit), therefore reference cannot be drawn from those orders. I find that after insertion of Section 131BA of the Customs Act, 1962 such orders do not have any precedence. However, I hold that such restrictions not applicable for any appellate forum, if department failed to demonstrate that fact and circumstances are different from in present case or any argument is put forward. I find that no such fresh argument has been advanced by the department. Moreover, the findings on the earlier occasions as enumerated in para-37.1.1 above are also applicable in this case. I also hold that AC charging facility shall have no impact on the classification as the lower authority himself extended the benefit to the appellant, where the said facility was also available along with inbuilt solar panel. The Chair has already decided the issue and without distinguishing the fact and circumstances, there cannot be any deviation from the earlier taken stand.*

37.5 *I also find that Note 3 to the Section-XVI of the 1st Schedule of the Customs Tariff Act, 1975 states that "Unless the contest otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as of consisting only of that component or as being that machine which performs the principal functions". Thus on this account also, I hold that goods are classifiable under tariff item 94055040 as drawing energy from the sun-light (Solar) is the primary and principle function of the goods."*

2. On specific query of the Bench during the argument, the Learned Counsel submits that these goods were either carrying portion of the panels (Table C, Serial No. 1), or all of them were being specific USB Port "Solar charging" and separate "AC charging" points. These are all recorded in the Order-in-Original itself. He submits that it clearly shows that the lantern can be primarily used as "solar lantern" but in case of emergency, the same can be used by plugging in the electrical connection. He further submits that the Revenue has not come out with any adverse Test Report/Ground that the lanterns do not have any facility to charge them through solar panels by using such USB ports. The very fact that the USB Port has been specifically given in the lanterns showing that they are for "Solar charging" clarifies that the product is classified under Chapter "94055040".

3. The Learned Counsel relies on the case law of **Aura Solar Products Pvt. Ltd. Vs. Commr. of Central Excise, Pune-III-2021 (44) G.S.T.L. 82 (Tri.-Mumbai)**.

4. The Learned AR appearing for the Appellant Revenue reiterated the findings of the assessing officer and prays that the present Appeal may be allowed.

5. Heard both sides and perused the documents placed before us.

6. On going through the OIO, we find that at Table (C), the Customs officials have drawn the samples for testing. In the very first case, there is "Solar Mini Emergency Light with LED as inbuilt Solar Panel". In other cases, we find that there are no inbuilt solar panels but they have all with 'USB port' with marking "Solar Charging" and they have also separate AC Charging point. There is nothing to deduce from the Test Report of the Revenue that this USB Ports cannot be used for charging the lanterns through solar panels. In the absence of any findings on this, we have to take view that the Appellants are correct and they are all lanterns having USB Port specifically for Solar charging. Overall, it would show that the lanterns are basically 'solar lanterns' and further ports have been given for normal charging through electricity in case of emergency.

7. We find that the issue of solar lantern was also before the Mumbai Bench, in the case of **Aura Solar Products Pvt. Ltd. Vs. CCE-Pune-III-2021 (44) G.S.T.L. 82 (Tri.-Mumbai)**. The Hon'ble Mumbai Tribunal has held as under:-

"4.5 From the opinion as reproduced above it's quite evident that it is not in respect of the package in the manner in which it is cleared. From the facts as narrated above it is quite evident that while the goods in the form in which it is cleared was with the SPV Panel whereas the sample was without the SPV Panel. Further the opinion clearly states that the batteries of the lamp can be charged with the solar power normally but in emergency or non-availability of solar power the same can be recharged by using the normal power source with a suitable adapter. For classifying the one of two lamps in the package Revenue has relied on the fact that it can be charged with the normal power supply using suitable adapters. While doing so they ignore the fact that the technical opinion given by the IIT Professor clearly states that the normal mode of charging the batteries in the lamps will be solar power only. Further it is not even the case of Revenue that the package was being cleared with a suitable adapter to charge the batteries using normal power supply. In our view the technical opinion furnished by the Revenue is clear and loud against the stand taken by the Revenue to determine the classification of one of the two lamps being supplied in the package in the form in which it is sold."

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8. Therefore, we hold that the Appellant is correct in classifying the goods under "CTH 94055040" and do not see any reason to interfere with the OIA passed by the Commissioner (Appeals) on the issue of classification.

9. The Learned AR submits that even the value was enhanced at the time of assessment.

10. Since we are already deciding the issue on classification itself, taking any view of enhancement of value based on classification of the goods under Chapter 85 as viewed by the Revenue, would be infructuous at this stage.

11. In view of the above detailed findings, we uphold the impugned OIA and dismiss the Appeal filed by the Revenue.

(Dictated and pronounced in the open court.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)