CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

WEST ZONAL BENCH, MUMBAI

Customs Misc. Application No. 93267 of 2017

(on behalf of Appellant)

In

Customs Appeal No. 258 of 2009

(Arising out of Order-in-Appeal No. 260/Mumbai-III/2008 dated 24-12-2008 passed by the Commissioner of Customs (Appeals), Mumbai-III)

........Appellant

COMMISSIONER OF CUSTOMS (Import)
Air Cargo Complex,
Sahar, Mumbai-400 099.

VERSUS

IBM INDIA PVT LTD ....Respondent
63, AFL Pvt Ltd, Log Div. Survey, 95,
Village Vadape, Nasik Highway
Taluka Biwani,
Dist. Thane – 421302**.**

<u>APPERANCE:</u>

Shri. R. Kumar, Asst. Commissioner, Authorised Representative for the Appellant
Shri B.V. Kumar, Advocate, for the Respondent

CORAM: HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87379/2019

Date of Hearing: 20-09-2019

Date of Decision: 20-09-2019

SUVENDU KUMAR PATI:

Narrow issue that has brought the dispute to the Tribunal stage is the distinction between 'hard disc drive' and 'exchangeable/removable disc drive' that led to denial of benefits of Notification no. 6/2006-CE to the imports made by the appellant in December 2007 through 10 number of Bills of Entry.

2. Fact of the case goes to show that appellant declared to have imported hard disc drive classifiable under CTH 84717020 but respondent department contented that the product was removable/exchangeable disc drive which was not covered under Central Excise exemption notification no. 6/2006-CE dated 1-3-2006 for which appellant was asked to pay CVD @ 16% instead of 'zero' which was also paid on protest in response to OIO. However, Commissioner of Customs (Appeals), Mumbai-III had set aside the OIO passed by the Dy. Commissioner of Customs, Air Cargo Complex, Mumbai and allowed the exemption available to the hard disc drive in favour of the appellant. Respondent therein i.e. Revenue Department has assailed the said order in this Forum.

3. In the Memo of appeal and during the course of hearing of the appeal Learned Authorised Representative for the appellant department Mr. R. Kumar, Asst. Commissioner submitted that the disputed imported goods were in fact removable hard disc drive classifiable under CTH 8471 70 30 and was not allowed to be imported with concessional rate of duty available under notification no. 6/2006. In supporting the findings of Dy. Commissioner of Customs given in his order-in-original dated 10-1-2008,

he argued that Ld. Commissioner (Appeals) had placed reliance on the literature/brochure of the respondent company to hold a finding that no such distinction exist between those two products. Since the nature of hard disc drive and removable hard disc drive are dis-similar such findings should not have been given by holding the respondent's version as expert opinion, which involves biasness for which the order passed by the Commissioner (Appeals) is required to be set aside.

4. In response to such submission and in conformity to the cross objection which was treated as written statement of respondent, Learned Counsel for the respondent company Mr. B.V. Kumar submitted that the reasoning and rationality of the order passed by the Commissioner of Customs (Appeals) needs no interference by this Tribunal in view of the fact that Ld. Commissioner had not only visually inspected the product but had studied its features to hold that the imported discs are hard discs and are eligible for exemption vide notification no. 6/2006.

5. We have heard submissions from both the sides and perused case record as well as relevant notification no. 6/06. Going by the notification, we are unable to find any provision whereby removable or exchangeable type of hard disc drives were being excluded from the coverage of notification no. 6/2006. On the other hand, the exemption notification covers all goods classified under CTH 847170 which are of 6 digital level whereas the differentiation between hard disc drive and removable/exchangeable disc drive are distinguishable at 8 digit level. Therefore in the normal parlance, even if appellant had declared the goods

as hard disc drive, there is apparently no misdeclaration in it for which the benefits of exemption notification no. 6/06 should have been extended to the appellant. Further, consistant findings are given by Tribunal ever since pronouncement of the order in the case of *C.EX. Hyd.-II v. Tata Consultancy Services Ltd reported in 2008 (21) E.L.T.217* that notification no. 6/06 covers removable disc drive. Principle Bench of CESTAT, Delhi also in the case of *Commissioner of Customs, New Delhi v. Supertron Electronics P. Ltd., in 2017 (357) E.L.T. 401 (Tri.- Del.)* upheld such a finding of the Commissioner (Appeals). Needless to point out here that in the judgment of CESTAT Mumbai reported in the case of *INGRAM MICRO INDIA PVT. LTD. v. COMMR. OF CUS. (IMPORT). ACC. MUMBAI in 2017 (346) E.L.T. 593 (Tri.- Mumbai)*, though it was held that external/removable hard disc was not covered under tariff item no. 84717020 of the Central Excise tariff and therefore not eligible for exemption, it was passed in confirming to the notification no. 12/2012-CE dated 17-3-2012 that contained 8 digit HS code for which the submission of Ld. Authorised Representative that exemption of CVD would not be applicable for the goods imported by the appellant is not acceptable. Hence the order.

6. The appeal is dismissed and the order No. 260/Mumbai-III/2008 dated 24-12-2008 passed by the Commissioner of Customs (Appeals), Mumbai-III is hereby confirm.

(Dictated & pronounced in open Court)

(DR. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

(C J MATHEW)
MEMBER (TECHNICAL)

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