CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Appeal No. 85270 of 2020

(Arising out of Order-in-Appeal No. S/49/1398/2019-Misc/JNCH - 10 (Gr.V)/2020(JNCH)/Appeal-II dated 06.01.2020 passed by Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva)

M/s. Star Dimension India Pvt. Ltd. **Appellant**
303, Mathura Apts., Sir M.V. Road,
Andheri (E), Mumbai 400 069.

Vs.

Asstt. Commr. of Customs, Nhava Sheva-II **Respondent**
Group 5, NS V, Nhava Sheva

Appearance:

Shri Kuldeep Singh Nara, Advocate, for the Appellant
Shri Manoj Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. **A/85356/2021**

Date of Hearing: 28.01.2021
Date of Decision: 12.02.2021

PER: SANJIV SRIVASTAVA

This appeal has been filed against order in appeal No S/49/1398/2019-Misc/JNCH - 10 (Gr.V)/2020(JNCH)/Appeal-II dated 06.01.2020 of the Commissioner of Customs (Appeals) Mumbai II, JNCH, Nhava Sheva. By the impugned order Commissioner (Appeal) has held as follows:

"14. In view of above the Order in Original No 440/2019-20/AC/NS-V/JNCH dated 30.10.2018 passed by the Asst Commissioner of Customs Group V NS-V JNCH Nhava Sheva is upheld and Appeal No 1398/2019 filed by M/s Star Dimension (I) Pvt Ltd. is rejected being devoid of merit."

2.1 Appellant had filed Bill of Entry No 4777113 dated 05.09.2019, for the clearance of the goods imported by them namely Winches (stage Lighting Equipment) and LED Balls of different sizes, having declared value of Rs 21,19,307/- and Rs 1,73.398/-. They claimed the classification of winches under Custom Tariff Heading 84253100 and those of LED Ball under 85395000.

2.2 On examination of the goods, Docks officer, found that winches are to be specifically used in kinetic lights with sole function as stage lighting equipment. Thus the goods were correctly classifiable under the heading 94054090 attracting Custom Duty of (BCD-20%+SCW-10%+IGST-12%) against (BCD-7.5%+SCW-10%+IGST-18%) as claimed by the appellant. Thus the matter was referred by the dock officers to the group for determination of the correct classification and applicable duty.

2.3 After consideration of the submissions made by the Appellant, Assistant Commissioner vide his order in original held as follows:

"25. In view of the above, I pass the following order:

i) I order for rejection of classification of goods under CTH 84253100 and re-classify the goods under CTH 94054090 with duty structure of (BCD 20% + SWS-10% + IGST - 12%).

*ii) I order for absolute confiscation of the offending goods mentioned al S no. 1 of B/E no. 47771'13 dtd. 05.09.2019 i.e. 110 pcs of Winches valued at Rs.21,19,307/- under Section 111l(d) &111(m) of the Customs Act, 1962. However. I give the importer an option to redeem the goods on payment o! **Redemption Fine of Rs.2,00,000/- (Rupees Two Lakhs only)** under Section 125 of the Customs Act, 1962 <u>**for re-export purpose only**</u>*

*iii) I impose a Penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on the importer under Section 112(a) of the Customs Act, 1962*

iv) I order to release of the goods at S No. 2. 3. & 4 Bill of Entry No. 4777113 dated 05.09.2019 i.e. total 112 pcs of Balls for LED of different size totally valued at Rs.1,73,398/- on payment of appropriate duty

26. This order is issued without prejudice to any other action that may be taken in respect of the foods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962 and/or any other law for the time being in force in the republic of India."

2.4 Aggrieved by the order of Assistant Commissioner, Appellants preferred an appeal before Commissioner (Appeals). The appeal filed by the Appellants was dismissed by the Commissioner (Appeals), by his order in appeal, referred in para 1, supra.

2.5 Aggrieved by the impugned order, appellants have filed this appeal before CESTAT. They also filed an application for early hearing of the appeal, which was allowed by the tribunal vide Miscellaneous Order No M/85261/2020 dated 09.11.2020.

3.1 We have Shri Kuldeep Singh Nara, Advocate for the Appellant and Shri Manoj Kumar, Assistant Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the Appellant, learned Advocate submitted-

- Appellate authority has himself and Chartered Engineer has clearly certified that the imported items are winches only
- The order of the Appellate authority has been passed contrary to the General Interpretative Rules to the First schedule of Tariff;
- Even in trade and common parlance these goods are considered as winches. As per the decision of the Apex Court in the case of Wockhardt Life Sciences Limited [2012

(277) ELT 299 (SC)] and A Nagaraja Bros [(1994) Supp 3 SCC 122], Delhi Cloth and General Mills Co Ltd [(1980) 4 SCC 71] has held that common parlance or trade parlance test to be basis for the determination of classification. He relies upon several other decisions of the various authorities expounding the same principle.

- Since Winch is separate entity which is not covered under heading "LED driver and MPCB" of 94054090, it will get classified under Heading 84253100.
- Even by application of General Notes for Parts to Section XVI these goods will get classified under heading 84253100 only.
- Further in terms of the law laid down in the following decisions also the imported goods will get classified under the heading 84253100
    - Simplex Mills Co. Ltd [2005 (181) ELT 0345 (SC)]
    - Belmarks Pvt ltd {2003 (158) ELT 295 (T-Del)]
    - Hitachi Home & Life Solution Ltd [2012 (285) ELT 504 (T-Mum)]
    - Singhla Sales Corporation Pvt Ltd {2002 (141) ELT 806 (T-Del)]
    - M P Dyechen Industries {2002 (139) ELT 656 (T-Del)]
- Burden is on the department to prove that goods get classified in the particular heading
    - Hindustan Lever Ltd {2015 (323) ELT 209 (SC)]
    - HPL Chemical Ltd [2006 (107) ELT 324 (SC)]
    - Hindalco Industries Ltd {2007 (217) ELT 343 (Cal)]
    - Puma Ayurvedic Herbal (P) Ltd {2006 (196) ELT 3 (SC)]
- Winches imported by them are classifiable under 84253100 and hence do not require compulsory registration as per the Electronics and IT Good (Requirements for Compulsory Registration) Order, 2012

- In case of misclassification goods by the importer, the goods will not become liable for confiscation as has been held in following cases
  - S Rajiv & Co [2014 (302) ELT 412 (T-Mum)]
  - Komal Trading Company [2014 (301) ELT 506 (T-Mum)]
  - Surbhit Impex Pvt Ltd [2012 (283) ELT 536 (T-Mum)]
  - MT Ltd [2007 (214) ELT 10 (SC)]

3.3 Arguing for the revenue learned Authorized representative, while reiterating the finds recorded in the order of the lower authorities, submitted as follows:

- Commissioner (Appeal) has in para 8 of his order, after referring to Kinetic Lighting User Manual, submitted by the appellant has found that the item classified by the appellants as general purpose winches under heading 84253100, are in fact LED Winches, which perform the function of movement of LED Lights in a synchronized manner and hence are more appropriately classifiable under heading 94054090 as light/electrical fittings.
- Appellant has not disputed the findings of the OA that these Winches LED also regulate the power required for LED balls and supply a constant amount of power to the LED hence incorporating the function of LED driver. As discussed above the LED Winch is a light fixture on which LED ball is hanged and is nothing but a light fixture, incorporating LED Driver which is covered under the Electronics and IT Goods (Requirements for Compulsory Registration) Order, 2012. Importers contention is that the subject goods ie Winches is not a driver or control gear of LED but it is an independent and general item for holding or adjusting LED lights and that only general lightening covers under the scope of Compulsory Registration Order, 2012, without any clarification/guidelines from the BIS authorities is not sufficient to establish from exemption

from the requirement of registration. The Electronics and IT Good (Requirements for Compulsory Registration) Order, 2012 does not differentiate LED Driver on the basis of its use for industrial purpose. Thus the importers contention that Winch imported by them does not require BIS registration is devoid of merit.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument of appeals. In the matter the following questions have been raised for our determination.

(i) Correct Classification of the imported good under the heading 84253100 or 94054090?

(ii) Whether the goods are required to be compulsorily registered with BIS, in view of the provision of the Electronics and IT Goods (Requirements for Compulsory Registration) Order, 2012?

(iii) Goods liable for confiscation and penalty on the importer justified?

Correct Classification of the imported good under the heading 84253100 or 94054090?

4.2 Commissioner appeal has in para 8 of his order referred to the Catalogue of the product and observed as follows:

“8. The appellant along with the appeal has submitted Kinetic Lighting User Manual. From careful perusal of the same, it is evident this LED Winch is the main equipment of the whole Kinetic Lighting System. The other parts/accessories which are used in the Kinetic Lighting System are LED Ball, Power Cable, Signal Cable, Connecting Cable, Safety Cable and Clamp. Further, there is a clear warning in the manual that "Running without hanging any light-emitting equipment is strictly prohibited". The equipment has LCD display for menu selection, DMX in & out socket, Power Switch, USB for update, Fuse and Power in & out socket. It clearly shows that this equipment is not a general purpose equipment which is to be used for lifting and

handling. It has specific use in t lighting and goods is marketed as "Kinetic Light System in stage/ event lighting. From Channel Charts at Page 4 to 6 of the user manual, I find that this equipment performs the function of lifting of LED Equipment, Dimmer function of light from dark to bright, Color macro (changing of colour), strobe function (slow to fast and close) etc. The CE in its report mentioned that the machine has an integrated controller/control gear for controlling both the motor used for upward and downward motion of the LED Globe and that these goods are used in a variety of art, interior, stage shows and event for lifting and lighting applications. LED balls are hanged in this equipment for the purpose of its movement in synchronized manner. The equipment also performs function of regulating the power required for LED balls and supplies a constant amount of power to the LED. All these facts altogether show that the imported equipment is multi-functional equipment and lifting of LED Ball is not the main function of this equipment but it is ancillary function of the equipment. Since lighting equipment (LED Ball) is attached with the winch and winch provides the power to lighting equipment (LED Ball), the equipment is nothing but is a light fixture only."

4.3 After noting the Explanatory Notes to HSN for heading 84.25 in para 9 he records arrives at the classification of the goods in para 10. The para 9 and 10 of the impugned order are reproduced below:

"9. The appellant has classified the product under CTH 84253100. Therefore, for the sake of clarity, I find it relevant to reproduce relevant HSN Explanatory Notes to heading 84.25 here under:

"84.25 - Pulley tackle and hoists other than skip hoists; winches and capstans; jacks.

- Pulley tackle and hoists other than skip hoists or hoists of a kind used for raising vehicles:

- Winches, capstans

8425.31 - - Powered by electric motor

8425.39 - - Other

- Jacks, hoists of a kind used for raising vehicles:

8425.49 - - Other

This heading covers simple lifting or handling equipment. The provisions of Explanatory Note to heading 84.26 apply, mutatis mutandis, to the equipment of this heading insofar as they concern self propelled and other "mobile" machines, multi-function machines and lifting, loading, handling, etc., machines intended for incorporation in other machines or for mounting on transport vehicles or vessels of Section XVII. However, if a winch is the normal working tool of a tractor, the complete machine (tractor and winch) is classifiable in heading 87.01. The heading covers :

1. PULLEY TACKLE AND HOISTS OTHER THAN SKIP HOISTS

(II) WINCHES AND CAPSTANS

Winches consist of hand-operated or power-driven horizontal ratchet drums around which the cable is wound. Capstans are similar, but the drum is vertical. This group includes:

(1) Marine winches and capstans for operating cargo lifting gear, raising anchor, maneuvering the steering gear, hauling in tow lines, fishing nets, dredging cabies, etc. The power unit is often built into those machines as an integral whole.

(2) Winches for tractors, etc.

(3) Pit-head winding gear, consisting essentially of a large power-driven winch.

(4) Capstans for operating turn-tables, or for shunting railway wagons, etc. For shunting, the cable is usually passed along a number of bollards each freely turning on bearings to facilitate haulage. These bollards are classified in heading 73.25 or 73 26.
(5) Drawing blocks for wire-drawing benches."

10. From the above, it is evident that heading 84.25 covers simple lifting or handling equipment. The equipment imported in the present case cannot be termed as a simple handing and lifting equipment. These LED Winches perform the function of movement of LED lights in a synchronized manner which cannot be a ground to classify the goods under heading 84.25 which covers simple lifting and machine. The appellant has misconstrued from the description of imported goods as declared in the invoice/packing list. The Winches of Chapter 84 consist of hand-operated or power driven horizontal ratchet drums around which the cable is wound. However, there is no mention about these features in the user manual of the product submitted by the appellant."

4.4 Countering the findings recorded by the Commissioner (Appeal), Appellants have quoted a large number of case laws stating the general principles of classification. In our view there is no dispute in respect of the general principles of classification which are well understood and we do not need to dwell on those. Relying upon the certificate issued by the Chartered Engineer after inspection of the imported goods the appellants have submitted that the impugned imported goods are winches only having control gear. The main function of the winches imported by them is to lift and move the LED equipments upwards/ down wards/ horizontally/ vertically. Running cables are there in all the winches since the power has to move along with all the winches. Imported goods are multifunctional equipment and lifting of LED Ball is not the main function of this equipment but it is ancillary function of the equipment. The classification of the impugned imported goods should be based on the main function of the item and not its ancillary function.

4.5 The text of the Chartered Engineer Certificate dated 17th October 2019, is reproduced below:

"At the request of M/s. Star Dimensions India Pvt Ltd. 303 Mathuria Apts Sir M V Rd, Andheri East, Mumbai - 400069, Maharashtra, India, our independent Chartered Engineer along

with Shri. Praveen Kumar E.O Docks, Indian Customs, JNCH, inspected the following Samples "Winch (Stage Lighting Equipment)" at Sea Bird CFS, JNCH, Nhava Sheva on 10/10/2019.

Purpose of this inspection was to verify, assess and give opinion on the samples inspected on following points Viz:

a) To inspect & appraise the veracity of the Samples inspected in the 'as is where is condition':

On Physical & Visual verifications and examinations of the Samples inspected the following details were noticed.

S No	Description	CE's Remark
1	Winch (Stage Lighting Equipment)	• DMX Winch. • Used in stage lighting. • with integrated electronic controller/ control gear.

<u>CE's Comments / Opinions:</u>

i. *The Sample winch shown were inspected in as is where is condition.*

ii. *The Winch is having Star Dimensions marked on it, In the front Panel it has LCD Display for menu selection, DMX IN & Out Socket, Power Switch, USB for update, Fuse & Power In and Out Socket*

iii. *The sample winch was opened and checked for various aspects.*

iv. *The sample was found to have an integrated controller / control gear for controlling both the motor used for upward & downward motion of the attachment in this case the LED Globe.*

v. *DMX winches are used in a variety of art, interior, stage shows and events for lifting and Lighting applications. The primary use of our high precision hoists is the synchronized spatial choreography of large arrays of tethered LED lighting elements or other objects.*

vi. *DMX winches are specific in use (Stage Lighting).*

vii. *The Sample winch shown is steel and power wire DMX winch*

viii. *Such winches are not used for general lighting services / general purpose luminaries."*

From the plain reading of the Chartered Engineer Certificate, it is quite evident that the impugned goods are not simply handling or lifting equipments, their primary use is the synchronized spatial choreography of large arrays of tethered lighting elements, and is specific in use for stage lighting. This observation of the Chartered Engineer, will leave no iota of doubt in our minds as to the use of the impugned goods as lighting fixtures and not as simple handling or lifting equipment.

4.6 Tribunal has in case of Indian Aluminium Co Ltd Calcutta [1983 (13) ELT 979 (T)] stated the law as under in similar circumstances-

"5.*We have carefully considered the matter. There is no dispute between the parties that the blocker is not an integral part of the hot rolling mill but is an auxiliary equipment. There is also no dispute that the blocker performs the composite functions of (1) coiling, and (2) un-loading the coil sheet or strip on to the conveyor. From the three operational reasons given by the appellants themselves, namely, the shorter length of their hot mill table, making further handling and conveyance of the hot rolled long sheet possible and for feeding their cold rolling mill, we have no doubt in our mind that the principal function of the blocker is coiling. The coiling operation cannot be called mere handling. In the context of the appellants' plant, it is an essential process of manufacture in the course of production of cold rolled sheets and strips from aluminium ingots. We also agree with the Department's representative that none of the machines enumerated in Heading 84.22 alter the form or shape of the material; their function is confined to lifting, handling, loading, unloading and conveying. Since we hold that the principal function of the blocker is coiling, that is other than mere handling, it cannot be classified under Heading 84.22. ……."*

4.7 In case of R C Projects & Systems Ltd [2005 (183) ELT 319 (T-Bang)] again reiterating the same principles following was held:

"The contention of the appellants is that the item is required to be considered as parts of the machinery and draw reference to three judgments of the Tribunal. On our consideration, we find that in the case of CCE v. Conveyor Equipments Pvt. Ltd. [2001 (127) E.L.T. 478], the item Conveyor and material Handling equipments was cleared in CKD condition on account of its huge size, therefore the appellants contention that the entire system is to be considered as an individual item as it satisfies the description of sub-heading 8425.00 as Conveyor and material handling equipments was accepted. This citation is clearly distinguishable. So also in the case of CCE v. B.H.P. Engineers [2000 (119) E.L.T. 599 (T)], the goods cleared were parts of shipments of the conveyor for the purposes of convenience of transportation and held the same to be not as parts of Conveyor and hence the Revenue appeal was rejected. This judgment is also distinguishable. In the case of CCE v. Servall Engineering Industries [2004 (168) E.L.T. 125 (Tri-Che.)], the paper making machine was cleared batch-wise/section-wise in CKD/SKD condition, and hence it was held to be classifiable under sub-heading 8439.10 as complete machinery and not under sub-heading 8439.90 as parts of such machinery. This is also distinguishable. On perusal of records, we find that the appellants have produced technical write-up : which clearly describes the DC Drive Panel to control speed of the motor and it was housed inside the control panel. This control panel consists of DC drives and relays switchgears and necessary wiring. In view of specific heading under the Chapter Heading 8437 covering every classifying electric control panel. Therefore, the classification adopted by the revenue is in order. The judgments relied by the DR in the case of Intec Corporation v. CCE, Chandigarh [2003 (156) E.L.T. 544 (Tri-Del.)] confirming classification of electric control panels under specific Heading 85.37 applies to the facts of the case. There is a specific heading

for electric control panels and in terms of Note 2(a) of Section XVI, the electrical control panels are classifiable under Heading 85.37 Rule (1) of the Rules for the Interpretation of the Schedule also provides that classification shall be determined, according to the terms of heading and any relevant section or Chapter notes. The Tribunal has examined the Interpretative Rules, Section Notes and HSN explanatory notes to classify electric control panels under specific Heading 85.37 of the Tariff. In the case of Intec Corporation this judgment clearly applies to the facts of the case. Therefore, the contention of the appellants for classifying the Electric Control panels as parts of machinery is rejected and the impugned order is upheld. There is no merit in this appeal and the same is rejected."

4.8 In both the decisions referred above tribunal has applied the essential character test to reject the claim of classification as handling or lifting equipments. In the present case, both the authorities below have determined the essential character of the impugned goods as lighting fixture after considering the product catalogue (literature) and the Chartered Engineer Certificate. Appellants have not produced anything before us to disturb the said findings of lower authority, and establish that impugned goods are simple handling/ lifting equipment to merit classification under heading 84253100.

4.9 Heading 94054090 of reads as under-

9405 LAMPS AND LIGHTING FITTINGS INCLUDING SEARCHLIGHTS AND SPOTLIGHTS AND PARTS THEREOF, NOT ELSEWHERE SPECIFIED OR INCLUDED; ....

9405 40 - Other electric lamps and lighting fittings :

9405 40 10 --- Searchlights and sportlights

9405 40 90 --- Other

When both authorities have determined the essential character of the impugned goods as Lighting Fixture, then the classification as determined by them under heading 94054090 cannot be faulted with.

Whether the goods are required to be compulsorily registered with BIS, in view of the provision of the Electronics and IT Goods (Requirements for Compulsory Registration) Order, 2012

4.9 Both Assistant Commissioner and Commissioner (Appeal) have found that the goods have been imported in contravention of the provisions of Electronics and IT Goods (Requirements for Compulsory Registration) Order 2012. Assistant Commissioner has in para 19, of his order recorded as follows:

"19 On perusal of the sample and the catalogue, I find that the subject goods i.e. Winches are actually Winch LED having fast processor and hardware that program and control LED Lights. These winches have advanced feature like projection, mapping of moving objects in synchronized movement of one object connected to multiple winches. These winches LED also regulate the power required for LED balls and supplies a constant amount of power to the LED hence incorporating the function of LED drivers and hence require BIS for import clearance as per requirement of Compulsory Registration Order, 2012 issued under Bureau of Indian Standard Act, 1986"

4.10 Commissioner (Appeal) in para 12 of his order records as follows:

"12 Now I am coming on the aspect of applicability of BIS on the LED Winches imported by the appellant I find that the OA has observed that winches LED also regulate the power required for LED balls and supply a constant amount of power to the LED hence incorporating the function of LED driver. The appellant has not disputed this finding of OA. As discussed above the LED Winch is a light fixture on which LED Ball is hanged and is nothing but a light fixture incorporating LED Driver which is covered under the Electronics and IT Goods (requirements for Compulsory Registration) Order, 2012. Contention of the appellant that only general lighting covers under the scope of Compulsory Registration Order, 2012 without any clarification/ guidelines from the BIS authorities is not sufficient to convince

me from exemption from the requirement of registration. The Electronics and IT Goods (requirements for Compulsory Registration) Order, 2012 does not differentiate LED Driver on the basis of its use for industrial or general purpose. Thus the appellant's contention that Winch imported by them does not require BIS registration is devoid of Merits."

4.11 The Public Notice No 136/2018 dated 08.10.2018 issued by the Nhava Sheva Customs, states at para 2 as follows:

"2. Ministry of Electronics & Information Technology (MeitY) has notified RCR Order on 3 Oct 2012. The Order since then, has been progressively applied to increasing product categories of Electronic Goods. Presently, it covers electronic / IT goods as available on the BIS website at https://www.crsbis.in/BIS/products.do".

4.12 As per the Electronics and IT Goods (Requirements for Compulsory Registration) Order 2012,

2. Definitions
    (1) In this Order, unless the context otherwise requires,
        c. "Goods" means the Electronic and Information Technology goods specified in the column (2) of the Schedule;
        e. "Schedule" means schedule annexed to this order;
        g. "Specified Standard" in relation Electronic and Information Technology goods means the Indian Standard as specified in the column (3) of the Schedule;
3. Prohibition regarding manufacture, storage, sale and distribution etc of goods-
    (1) No person shall by himself or through any person on this behalf manufacture or store for sale, import, sell or distribute Goods which do not confirm to the Specified Standard and do not bear the words "Self declaration –confirming to IS (Relevant

Standard mentioned in column (3) of the Schedule) on the Goods after obtaining Registration from the Bureau:

Provided that nothing in this order shall apply in relation to manufacture of Goods for exports.

(2) The sub standard or defective Goods which do not confirm to the Specified Standard mentioned in column (3) of the Schedule shall be deformed beyond use by the manufacturer and disposed of as scrap.

The SCHEDULE annexed, to the Order has been amended from time and as per the information available on website of Bureau of Indian Standard, (https://www.crsbis.in/BIS/products.do), following products require compulsory registration.

1	Amplifiers With Input Power 2000W And Above	IS 616:2010*
2	Automatic Data Processing Machine	IS 13252(Part 1):2010*
3	Electronic Clocks With Mains Power	IS 302-2-26:2014*
4	Electronic Games (Video)	IS 616:2010*
5	Electronic Musical Systems With Input Power 200w And Above	IS 616:2010*
6	Laptop/Notebook/Tablet	IS 13252(Part 1):2010*
7	Microwave Ovens	IS 302-2-25:2014*
8	Optical Disc Players With Built In Amplifiers Of Input Power 200w And Above	IS 616:2010*
9	Plasma/LCD/LED Televisions Of Screen Size 32"; And Above	IS 616:2010*
10	Printers, Plotters	IS 13252(Part 1):2010*
11	Scanners	IS 13252(Part 1):2010*
12	Set Top Box	IS 13252(Part

		1):2010*
13	Telephone Answering Machines	IS 13252(Part 1):2010*
14	Visual Display Units, Videos Monitors Of Screen Size 32" And Above	IS 13252(Part 1):2010*
15	Wireless Keyboards	IS 13252(Part 1):2010*
16	Cash Registers	IS 13252(Part 1):2010*
17	Copying Machines/Duplicators	IS 13252(Part 1):2010*
18	Passport Reader	IS 13252(Part 1):2010*
19	Point Of Sale Terminals	IS 13252(Part 1):2010*
20	Mail Processing Machines/Postage Machines/Franking Machines	IS 13252(Part 1):2010*
21	Power Banks For Use In Portable Applications	IS 13252(Part 1):2010*
22	Smart Card Reader	IS 13252(Part 1):2010*
23	Mobile Phones	IS 13252(Part 1):2010*
24	Self-Ballasted Led Lamps For General Lighting Services	IS 16102(Part 1):2012*
25	Dc Or Ac Supplied Electronic Control gear For Led Modules	IS 15885(Part 2/Sec 13):2012*
26	Power Adaptors For Audio, Video & Similar Electronic Apparatus	IS 616:2010*
27	Power Adaptors For It Equipments	IS 13252(Part 1):2010*
28	Fixed General Purpose Led Luminaries	IS 10322(Part 5/Sec 1):2012*
29	Ups/Invertors Of Rating <= 5kva	IS 16242(Part

		1):2014*
30	Sealed Secondary Cells/Batteries Containing Alkaline Or Other Non-Acid Electrolytes For Use In Portable Applications	IS 16046:2015*
31	Indian Language Support For Mobile Phone Handsets	IS 16333 (Part 3) : 2016*
32	Recessed Led Luminaries	IS 10322 (Part 5/Section 2) : 2012
33	LED Luminaries For Road And Street Lighting	IS 10322 (Part 5/Section 3) : 2012
34	Led Flood Lights	IS 10322 (Part 5/Section 5) : 2013
35	LED Hand Lamps	IS 10322 (Part 5/Section 6) : 2013
36	Led Lighting Chains	IS 10322 (Part 5/Section 7) : 2013
37	LED Luminaries For Emergency Lighting	IS 10322 (Part 5/Section 8) : 2013
38	UPS/Inverters Of Rating <= 10kva	IS 16242 (Part 1) : 2014
39	Plasma/ LCD/LED Television Of Screen Size Up-To 32	IS 616 : 2010
40	Visual Display Units, Video Monitors Of Screen Size Upto 32	IS 13252 (Part 1) : 2010
41	CCTV Cameras/CCTV Recorders	IS 13252 (Part 1) : 2010
42	Adapters For Household And Similar Electrical Appliances	IS 302 (Part 1) : 2008
43	USB Driven Barcode Readers, Barcode Scanners, Iris Scanners, Optical Fingerprint Scanners	IS 13252 (Part 1) : 2010
44	Smart Watches	IS 13252 (Part 1) : 2010
45	Crystalline Silicon Terrestrial	IS 14286 : 2010/ IEC

	Photovoltaic (PV) Modules (Si Wafer Based)	61215 : 2005, IS/IEC 61730 (Part 1) : 2004 & IS/IEC 61730 (Part 2) : 2004
46	Thin-Film Terrestrial Photovoltaic (PV) Modules (A-SI, CIGS And CDTE)	IS 16077 : 2013/ IEC 61646 : 2008, IS/IEC 61730 (Part 1) : 2004 & IS/IEC 61730 (Part 2) : 2004
47	Power Invertors For Use In Photovoltaic Power System	IS 16221 (Part 2) : 2015
48	Utility-Interconnected Photovoltaic Inverters	IS 16169 : 2014
49	Storage Battery	IS 16270 : 2014

4.13 From the Electronics and IT Goods (Requirements for Compulsory Registration) Order 2012, referred above it is quite evident that the said order is applicable in respect of the Goods, as defined and specified in the schedule. Further the goods should be conformity with specified Indian Standard as per the schedule. Both the authorities below have failed to specify the Indian Standard as per the Schedule, to which these imported goods, i.e. LED Winches should have been in conformity before proceeding to hold them to be imported in contravention of the provisions of Electronics and IT Goods (Requirements for Compulsory Registration) Order 2012. In absence of any determination of the Indian Standard, which would be applicable in respect of these goods the impugned order holding that goods have been imported in contravention of the provisions of the Electronics and IT Goods (Requirements for Compulsory Registration) Order 2012, cannot be sustained. In our view the order holding that the goods are prohibited and liable for absolute confiscation needs to be reconsidered by the authorities below in terms of the provisions of the Electronics and IT Goods (Requirements for Compulsory Registration) Order 2012. Hence the matter needs to be remanded back to the original authority for determination of Indian Standard as per the column (3) of the Schedule to the Electronics and IT Goods (Requirements for Compulsory Registration) Order 2012.

Are Goods liable for confiscation and penalty on the importer justified?

4.14 For holding goods liable for confiscation, Assistant Commissioner, has recorded reasons as follows:

“21. The Hon'ble Supreme Court in the case of Om Prakash Bhatia (2003 (155) ELT 423 (SC)] has held that if the importation and exportation of goods are subject to certain prescribed condition, which are to be fulfilled before or after clearance of goods and is such condition are not fulfilled, then in such a case the goods would fall in the ambit of "Prohibited goods". According to section 111(d) of Customs Act, 1962,

22. I find that there is deliberate and conscious attempt to evade legitimate Customs duty by way of mis-classification and hence the goods are liable to confiscation under section 111(m) of the Customs Act, 1962. According to Section 111(m) of the Customs Act, 1962, following goods brought from a place outside India shall be liable to confiscation:

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 771 in respect thereof, or in case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub section (1) of section 54;

23. From the above, it is seen that importer has not only mis-classified the impugned goods intentionally i.e. 110 pcs of Winches under chapter 84253100 with lower duty structure with sole purpose to evade payment of legitimate Customs duty classifiable under CTH 94054090 with higher duty structure of (20% + 10% + 12%) therefore same are found to be non-compliance of BIS which is mandatory, hence restricted to import. The importer is being attempted to clear the prohibited goods, without BIS Certification.”

4.15 We agree to the submission made by the appellant that time and again it has been held by various authorities that mere misclassification of goods, is not misdeclaration for which the goods can be held liable for confiscation under Section 111 (m) of the Customs Act, 1962. However we find that the Assistant Commissioner has for confiscation not only invoked Section 111 (m) but has also held that the goods are prohibited goods and are liable for confiscation under section 111 (d) too. Since the goods have been held as prohibited for the reason of failure to comply with the requirements of compulsory registration of the goods as per Electronics and IT Goods (Requirements for Compulsory Registration) Order 2012, and we are remanding the matter for consideration of applicability of the said order to the impugned goods, the issue of confiscation in terms of this Section 111 (d) and penalty under Section 112 (a) also is remanded back to the original authority.

5.1 In view of the discussions as above, the appeal filed by the Appellants is disposed as per our observations in para 4.9 4.13 & 4.15 and matter remanded back to the original authority.

5.2 Since the matter is with reference to the live consignment, for which the Bill of Entry was filed on 05.09.2019, Assistant Commissioner should take up the issue on priority and pass the order in remand proceedings within three months from the date of receipt of this order, after affording the opportunity of hearing to the appellants.

(Order pronounced in the open court on 12.02.2021)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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