CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Early Hearing Application No. 85081 of 2024

With

Customs Appeal No. 85272 of 2024

(Arising out of Order-in-Original CAO No.CC-GSS/19/2023-24 Adj.(I) ACC dated 16.10.2023 passed by the Commissioner of Customs (Import), Air Cargo Complex (ACC), Sahar, Andheri (East), Mumbai.)

Rashi Peripherals Limited **.... Appellants**
5th Floor, Aristo House
N.S.Phad, Andheri East
Mumbai – 400 069.

Versus

Commissioner of Customs (Import) **.... Respondent**
Air Cargo Complex (ACC), Sahar
Andheri (East), Mumbai – 400 099.

APPEARANCE:

Shri Akhilesh Kangsia a/w Ms Apoorva Parihar, Advocates for the appellants

Shri Mahesh Patil, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86884/2024

Date of Hearing: 04.03.2024
Date of Decision: 04.03.2024

Per: M.M. PARTHIBAN

This appeal has been filed M/s Rashi Peripherals Limited, Mumbai (herein after, referred to as 'the appellants') assailing the Order-in-Original CAO No. CC-GSS/19/2023-24 Adj.(I) ACC dated 16.10.2023 (herein after referred to as 'the impugned order') passed by the Commissioner of Customs (Import), Air Cargo Complex, Sahar, Andheri (East), Mumbai.

2. The appellants-applicant has filed this Miscellaneous Application for early hearing of the case, on the ground that in a similar issue of classification of the impugned goods in the case of one another importer M/s Sant Kripa Appliances Pvt. Ltd. Vs. Commissioner of Customs-III, (ACC-Imports), Mumbai, the Tribunal had ordered the classification of the goods in favour of the importers extending the duty concession which they are duly eligible. Further, learned Advocate for the appellants have also claimed the CBIC have also issued instructions dated 20.07.2016, clarifying that the classification of impugned goods shall be under Customs Tariff Item (CTI) 8523 5100 and the benefit of exemption is extendable to such goods. We find that the grounds adduced by the appellants deserves merit and therefore, the early hearing application is allowed. The Revenue does not have any objection and therefore with the consent of both the parties, the case is being taken up for final hearing and disposal.

3.1 The facts of the case, leading to this appeal, are summarized herein below:

3.2 The appellants herein, had imported "Solid State Drive-Flash memory" through Air Cargo Complex (ACC), Mumbai and for this purpose have filed various Bills of Entry (B/Es) periodically during the disputed period from 20.10.2017 to 10.02.2021, by classifying the impugned goods under Customs Tariff Heading (CTH) 8471 and claimed the Basic Customs Duty (BCD) exemption on imported goods vide Sl. No. 8 of Notification No.24/2005-Customs dated 01.03.2005; however, the department had resorted to classification under CTH 8528, and also extended exemption from BCD under Sl. No. 15 of Notification No.24/2005-Customs dated 01.03.2005. As there was no duty implication in such re-assessment by the department, the appellants did not challenge the same. However, due to confusion prevailing in respect of classification of goods, the appellants under the aegis of Technology Distributors Association of India have represented the issue to Central Board of Excise and Customs (CBEC) through the line Ministry. Subsequently during SIIB investigation, import of goods as above by availing the BCD exemption was objected to and show cause proceedings were initiated.

3.3 Earlier in the case of import of 'Solid State Drives' under B/E No.4166491 dated 05.02.2016 by the appellants, the issue was adjudicated by the Deputy Commissioner of Customs classifying the said goods under CTH 8523 and denying the duty exemption benefit under Sl. No. 15 of

Notification No.24/2005-Customs dated 01.03.2005. Being aggrieved with the said order, and on appeal filed by the appellants importer, the learned Commissioner (Appeals) vide Order-in-Appeal dated 10.11.2017 had allowed the appeal of the appellants by setting aside the original order and ordering the concerned officers for reassessing the goods by extending the benefit customs duty exemption under the said Sl. No. 15 of Notification dated 01.03.2005. It is claimed by the appellant that no appeal has been preferred by the department against such Order of the Commissioner (Appeals), and therefore the present proceedings cannot be sustained.

4. On the other hand, learned Authorised Representative for Revenue reiterated the findings of the Commissioner in the impugned order, and submitted that the impugned order had discussed in detail about the classification of the impugned goods and how these are not eligible for duty exemption under Notification dated 01.03.2005. Therefore, he prayed that the appeal preferred by the appellants is liable to be set aside.

5. Heard both sides and perused the records of the case.

6. The short issue for consideration before the Tribunal in this case is,-

(i) classification of imported 'Solid State Drives' under the appropriate classification under the First Schedule to the Customs Tariff Act, 1975, for determination of appropriate customs duty payable thereon.

(ii) whether the imported goods 'Solid State Drives' are eligible for exemption from payment of Basic Customs Duty under Notification No. 24/2005-Customs dated 01.03.2005 or not?

7. On perusal of the case records, we find that the aforesaid issues have been already dealt in by the Coordinate Bench of the Tribunal in the case of Ingram Micro India Pvt. Ltd. vide Final Order No. A/89179/16 dated 29.07.2016 as well as in the case of Sant Kripa Appliances Pvt. Ltd. in Final Order No. A/85932/17/CB dated 07.02.2017. In these cases, the Tribunal had remanded the matter back to the adjudicating authority for reconsideration on the basis of the clarification dated 29.07.2016 issued by CBEC, by setting aside the impugned orders therein.

8.1 We further find that the CBEC vide its instruction F. No. 528/43/2016-STO (TU) dated 20.07.2016 have examined the representations received from the trade about the extension of customs duty exemption benefits under Serial No. 3 of Notification No. 24/2005-Customs dated 01.03.2005 and Serial No.15 of Notification No. 24/2005-Customs dated 01.03.2005 as amended by Notification No.132/2006-Customs dated 30.12.2006. After examining the matter, the CBEC in categorical terms have instructed the customs field formations that benefit of customs duty exemption shall be extendable to secure digital (SD) cards classified under CTI 85235100. The extract of the said instruction is given below:

"Instruction

F. No. 528/43/2016-STO(TU)
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Excise & Customs
(Tariff Unit)

Room No.227-B, North Block
New Delhi 20th July, 2016

...

Subject: Extension of benefit of Notification No. 24/2005, dated 1-3-2005 (Sr. No. 3) {as amended by Notification No. 132/2006-Customs, dated 30-12-2006 (Serial No. 15)} to Micro/Mini SD cards - Regarding.

Representations have been received from the trade on the subject above.

2. The matter has been examined by the Board and it is observed that benefit of Notification No. 24/2005, dated 1-3-2005 (Sr. No. 3) {(as amended by Notification No. 132/2006-Customs, dated 30-12-2006 (Serial No. 15)} is extendable to Micro/Mini SD cards classified under CTH 8523 51 00 of the first schedule of the Customs Tariff.

3. Suitable Public Notice/Standing Order may be issued for the benefit of all stakeholders and Departmental officers.

4. All pending assessments, if any, may be finalized accordingly.

5. Difficulty faced, if any, may be brought to the notice of the Board."

8.2 From plain reading of the above instructions issued by CBEC, it transpires that the CBEC had issued the above instructions in extending the customs duty exemption benefit to the impugned goods, in terms of the legal provision under Section 151A of the Customs Act, 1962 for the purpose of uniformity in classification of goods and with respect to assessment for the levy of customs duty. Therefore, the Customs filed formations have to comply with such instructions and as specifically directed should take these into account for finalizing the pending assessments.

9. In view of the above, we find that the impugned order dated 16.10.2023 classifying the impugned goods differently and in denying the exemption under Notification No. 24/2005-Customs dated 01.03.2005 to such goods, have not examined those aspects clarified by the CBEC's instructions. Therefore, we are of the considered opinion that the impugned order does not stand the legal scrutiny and thus the same is liable to be set aside. As the factual aspects have not been examined in the context of above CBEC instructions, we are not considering the issues of classification and the eligibility of impugned goods for customs duty exemption for our examination and are leaving all the issues open to be argued before the adjudicating authority, by remanding the matter for *de novo* consideration. Needless to state that reasonable opportunity of personal hearing shall be given to the appellants. The adjudicating authority shall take into consideration the documents, if any, to be submitted by the appellants, instructions dated 20.07.2016 issued by CBEC, while considering the case in *de novo* adjudication proceedings.

10. In the result, by setting aside the impugned order dated 16.10.2023, we allow the appeal filed by the appellants by remanding the matter for *de novo* adjudication of the case by the learned Commissioner of Customs (Import).

(Operative portion of the order pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM