CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87615 of 2024

(Arising out of Order-in-Appeal No. 1156 & 1157{Gr.5A(FAG)}/2024 (JNCH)/Appeals dated 25.09.2024 passed by the Commissioner of Customs (Appeals), Mumbai-II.)

Prostarm Info Systems Ltd **.... Appellant**
Plot No. EL-35, TTC, MIDC,
Mahape, Navi Mumbai- 400 710.

Versus

Commissioner of Customs, Nhava Sheva-V **....Respondent**
JNCH, Nhava Sheva,
Mumbai-400 707.

With

Customs Appeal No. 87616 of 2024

(Arising out of Order-in-Appeal No. 1156 & 1157{Gr.5A(FAG)}/2024 (JNCH)/Appeals dated 25.09.2024 passed by the Commissioner of Customs (Appeals), Mumbai-II.)

Prostarm Info Systems Ltd. **.... Appellant**
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Versus

Commissioner of Customs, Nhava Sheva-V **....Respondent**
JNCH, Nhava Sheva,
Mumbai-400 707.

<u>APPEARANCE:</u>

Shri Akhilesh Kangsia, Advocate for the Appellant

Shri A.K. Shrivastava, 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/85259-85260/2025

Date of Hearing: 22.01.2025

Date of Decision: 22.01.2025

Per : S.K. MOHANTY

Heard both sides and perused the case records.

2. Denial of the benefit of Notification No.25/2005-Cus. dated 01.03.2005 in respect of "Uninterrupted Power Supply" (UPS) is the subject matter of present dispute. The authorities below have denied the benefit of such notification on the basis of the CTH 8504 40, holding that the product in question shall not be eligible for the benefit of exemption on the ground that the usage of the said goods are not specific to any particular Automatic Data Processing (ADP) machine. On perusal of the case records, more specifically the adjudication order dated 30.04.2024, we find that the original authority had referred to the Co-ordinate Bench decision rendered in the case of Cyber Power System India Vs. Commissioner of Customs 2024 (2) TMI 875-CESTAT-KOLKATA relied upon by the appellants. However, he had not recorded any findings on such decided case on the ground that the outcome of the decision passed by the Co-ordinate Bench is not known to the department. It is evident from such observation made by the original authority and upheld by the learned Commissioner (Appeals) that the issue arising out of the present dispute has already been dealt with in favour of the importer in the case of Cyber Power System India(supra). Thus, we are of the opinion that different interpretation cannot be placed to decide the present appeals differently.

2. The relevant paragraphs recorded in the order passed by the Tribunal in the case of Cyber Power Systems Ltd. (supra) are reproduced below:

"5. We note that the said notification extends benefit of customs duty exemption to Static Converter for Data Processing Equipment, classifiable under Chapter No. 850440. There is nothing restricting the claim of the said exemption, as long as the imported goods meet the said description. Their duality of use or exclusivity of usage are immaterial. In fact the wordings of the notification do not relate the

benefit to any end use of the said goods. All that is mandatory to be eligible to avail of the said duty benefit is the requirement of the product being a "Static Convertor for Data Processing Equipment." There is no end use verification prescribed or required to be satisfied in order to avail of the said duty concession. Further, it is settled law that an exemption notification is to be read into strictly and no word can be added or deleted thereto; there being no room for intendment and regard is to be given to the clear meaning of the words. There are a catena of decisions on the subject and just to place on record following decisions of the apex court are referred to.

(i) Hansraj Gordhandas Vs. NH Dave, Assistant Collector of Central Excise and Customs, Surat & Ors. (AIR-1970 SC 755).
(ii) Commissioner of Sales Tax, UP Vs. Modi Sugar Mills Ltd. (AIR-1961 SC- 1047) used.

5.1. The Ld. Commissioner vide his impugned order, while examining the aspect of admissibility of the exemption notification, has gone into the definition of static converters as contained in the HSN. However, it would be noted that the said definition referred to by him is an inclusive definition and it cannot be deemed to impute only those items as contained in the HSN explanation. For ready reference, the said definition is extracted, from the order under reference of the Ld. Commissioner.

> *"13……………….In terms of explanatory notes to Harmonized Commodity, Description and Coding System(HSN), as appliable for goods of CTH 8504, these static converters include rectifiers, inverter, AC converters, DC Converters, Gas Discharge Converters, Electrolytic rectifiers stabilized suppliers (rectifiers combined with regulator) e.g. Uninterrupted Power Supply (UPS) for a range of electronic equipments." The Ld. Commissioner has interpreted this definition to impute that the Home UPS is "classifiable under CTH 850440, but it does not qualify for exemption under Sl. No. 4 of Notification No. 25/2005Cus as the said static converters are not exclusively for Data Processing Equipment."*

6. It is well known that an exemption notification is to be read the way it is worded and no words can be added or deleted therefrom. The adjudicating authority reading the said terminology used in the notification to as to be used "exclusively" (implying solely or only) does not flow from the plain wordings of the exemption notification. We are thus not in agreement with the interpretation rendered the learned Commissioner and to impute malafides into the matter, as *we find that the importer has truthfully declared the item contained and for ascertaining the technical parameters, the literature of the goods was also found enclosed. It would be worthwhile to place on record the technical parameters of the imported goods.*

4. In view of the foregoing discussions, we do not find any merits in the impugned order passed by the learned Commissioner (Appeals). Accordingly, the impugned order is set aside and the appeals are allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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