CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86643 OF 2023

[Arising out of Order-in-Appeal No: MUM-CUS-MA-IMP-168/2022-23 NCH dated 30th November 2022 passed by the Commissioner of Customs (Appeals), Mumbai Zone I.]

Sigma Power Products Pvt Ltd
18 Chandni Chowk Street, 3rd Floor Kolkata – 700 072 … ***Appellant***

versus

Commissioner of Customs (Import-I)
New Customs House, Ballard Estate, Mumbai - 400001 ***…Respondent***

APPEARANCE:

Shri Manoj Lakhani, Consultant for the appellant

Shri Ram Kumar, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85968/2025

DATE OF HEARING:	07/11/2024
DATE OF DECISION:	06/05/2025

PER: C J MATHEW

M/s Sigma Power Products Pvt Ltd is aggrieved by the charging of differential duty of ₹ 1,36,343 in the import of 'LED rechargeable bulbs', 'LED chargeable searchlights' and 'LED chargeable bulbs' in 9 bills entry, *viz.*, 6302024/08.05.2018, 6302024/08.05.2018, 6302025/08.05.2018, 6302025/08.05.2018, 6302025/08.05.2018, 6302034/08.05.2018, 6302034/08.05.2018, 6302035/08.05.2018 and 6302035/08.05.2018, wherein the goods were self-assessed to duty at the rate corresponding to tariff item 8513 1010 of First Schedule to Customs Tariff Act, 1975, but revised by the original authority to rates corresponding to tariff item 9405 4010 and 9405 4090 respectively and charging of interest thereon under section 28AA of Customs Act, 1962.

2. On appeal before the first appellate authority, the challenge thereof was rejected and the affirmation thereof by order[1] of Commissioner of Customs (Appeals), Mumbai Zone – I is in appeal before us.

3. We have heard Learned Counsel for the appellant and Learned Authorized Representative.

4. The description, as proposed by the original authority and corresponding to heading 9405, is

> *'Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included'*

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[1] [order-in-appeal no: MUM-CUS-MA-IMP-168/2022-23 NCH dated 30th November 2022]

of First Schedule to Customs Tariff Act, 1975. It is seen from the construction of description that, insofar as lights and allied fittings are concerned and notwithstanding ‘including search lights and spot lights’, it was intended as a residuary item and only to the extent that articles of the proposed description are not specified or included elsewhere. Consequently, in terms of the decisions of the Hon'ble Supreme Court in

5. In *Hindustan Ferodo Ltd v. Collector of Central Excise [1997 (89) ELT 16 (SC)]*, it was held that

> *‘It is not in dispute before us as it cannot be, that onus of establishing that the said rings fell within Item No. 22-F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.’*

and in *HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh [2006 (197) ELT 324 (SC)]* that

> *‘28. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub- heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue……’*

the obligation resides in customs authorities to justify the correctness of the specified description upon taking into account the exclusions of articles specified elsewhere. It is seen that, insofar as the search lights are concerned, the lower authorities have preferred to adopt rule 3 on the ground of same being more specifically conforming to the description and further by resort to the 'tie breaker' in rule 3(c) of General Interpretative Rules for Import Tariff appended to Customs Tariff Act, 1975. As far as the classification of the other products, *viz.*, 'LED bulbs' is concerned, customs authorities have relied upon the Explanatory Notes in chapter 90 in the Harmonized System Nomenclature (HSN) wherein emphasis has been placed on 'fixed installation' and on the factual finding that for the said article to operate as lamp it would have to be connected to an appropriate fixture. In our view, the latter interpretation is incorrect, insofar as the specific entry, *viz.*,

> *'Portable electric lamps designed to function by their own source of energy (for example, dry batteries, accumulators, magnetos), other than lighting equipment of heading 8512'*

corresponding to tariff heading 8513 of First Schedule to Customs Tariff Act, 1975 is concerned. It is clear from the description that the said LED bulb is, in fact, fixture of its own and would perform its function when connected to a socket and also when not so connected from the charge stored. It can, therefore, safely be concluded that these are functional lamps designed to draw from their own source of energy. Furthermore, the 'searchlights' are admittedly portable, and being battery emplaced therein, is in conformity with the description corresponding to tariff heading 8513 of First Schedule to Customs Tariff Act, 1975. The recourse to specific entry under heading 9504 of First Schedule to Customs Tariff Act, 1975 is not in accordance with the General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 inasmuch as conformity with the substituted heading should first be established before identification with specific tariff items within.

6. To the extent that both the articles, finding fitment within heading 8513 of First Schedule to Customs Tariff Act, 1975 itself, are, in consequence, excluded from the description corresponding to heading 9405 of First Schedule to Customs Tariff Act, 1975. In view of the above, recovery of differential duty is incorrect owing to the correctness of the declaration by the importer.

7. For the above reason the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 06/05/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*