CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85058 of 2024

(Arising out of Order-in-Appeal No. 326(Gr.VA)/2023(JNCH)/Appeals dated 16.03.2023 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

Socomec Innovative Power Solutions Pvt. Limited .... Appellants
Office No.2, 404,4th Floor, C-Wing,
Neelkanth Business Park, Near Vidya Vihar Station
Vidya Vihar (West), Mumbai - 400 086.

Versus

Commissioner of Customs, Nhava Sheva-V .... Respondent
Jawaharlal Nehru Custom House (JNCH)
Nhava Sheva, Taluka Uran, District Raigad
Maharashtra – 400 707.

Appearance:

Shri Akhilesh Kangasia along with Shri T. Vishwanathan, Ms. Apoorva Parihar, Advocates for the Appellant

Shri Deepak Sharma, 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/86855/2025

Date of Hearing: 14.02.2025
Date of Decision: 14.02.2025

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Socomec Innovative Power Solutions Private Limited, Mumbai (herein after, referred to as 'the appellants'), assailing the Order-in-Appeal No. 326(Gr.VA)/2023(JNCH)/Appeals dated 16.03.2023 (herein after, referred to as 'the impugned order') passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II.

2. The brief facts of the case are that the appellants were formerly known as M/s Socomec UPS India Private Limited. The appellants had imported 'Uninterruptible or Uninterrupted Power Supply (UPS) of Model No. U4GP 023S00-0-06 MAS GP4 20KW External Battery (Static Converter for ADP' by classifying it under Customs Tariff Item (CTI) 8504 4090, under Bill of Entry (B/E) No. 5582746 dated 25.09.2021 and self-assessed the same with

applicable Basic Customs Duty (BCD) 'NIL', by claiming full exemption from BCD applicable from the tariff rate 20% *ad valorem* vide Serial No. 4 of Notification No. 25/2005-Customs dated 01.03.2005 plus IGST at 18% *adv.*, in terms of Section 17(1) of the Customs Act, 1962. The said B/E was processed through Customs Automated System/Indian Customs Electronic Data Interchange System (herein after referred to as EDI, in short), and the self-assessment done was facilitated under Risk Management System (RMS) of EDI; and thereafter at the time of granting Out Of Charge (OOC), the Customs officer had verified the notification benefit claimed by the appellants-importer, by raising a query to submit the catalogue of the imported goods. Accordingly, the appellants submitted the product catalogue to the customs officer who had observed that the imported goods are used in small & medium-sized data centres, banks, medical facilities, medical devices, telecom & media infrastructure, transport control rooms etc.; UPS having wide applications and multiple use, is used with servers and not with Automatic Data Processing (ADP) machine. The Department had interpreted that Customs duty exemption provided under Serial No. 4 of Notification No. 25/2005-Customs dated 01.03.2005, covers only 'static converters' and the same does not cover 'UPS'; these are two different items, even though the purpose is to give backup continuous power supply in the absence of regular power supply, though both are classified under sub-heading 8504. In adjudication of the said case, the original authority vide Order-in-Original dated 10.12.2021 had come to the conclusion that the imported goods are not eligible for customs duty exemption and revised the assessment by denying the exemption benefit vide Notification No. 25/2005-Customs dated 01.03.2005 and confirming the differential BCD payable on the imported goods. Further, the imported goods were confiscated under sub-sections (o) & (m) of Section 111 of the Customs Act, 1962 and offered the same on payment of redemption fine of Rs.4,00,000/- under Section 125(1) *ibid* and also imposed penalty of an amount of Rs.2,00,000/- on the appellants importer under Section 112(a)(ii) ibid. Being aggrieved with the order of the original authority, the appellants had preferred an appeal before the Commissioner of Customs (Appeals), Mumbai-II. In disposal of the said appeal, learned Commissioner of Customs (Appeals) vide the impugned order dated 16.03.2023 had upheld the order of the original authority, and rejected the appeal filed by the Appellants. Feeling aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

3.1. Learned Advocate for the appellants submitted that the classification of UPS and its eligibility to customs duty exemption under Serial No. 4 of Notification No. 25/2005-Customs dated 01.03.2005 has been settled in their favour in respect of imports of the same goods under Chennai Customs jurisdiction by the Co-ordinate Bench of the Tribunal in their own case vide Final Order No. 40419/2024 dated 15.04.2024. However, the impugned order had relied upon the earlier judgement delivered by the Hon'ble High Court of Madras in the case of *Socomec UPS India Private Limited Vs. Commissioner of Customs (Appeals), Chennai* - 2015 (316) E.L.T. 556 (Mad.) in order to deny the exemption notification benefit. He stated that the appellants in respect of imports made in Chennai, had initially approached the Hon'ble High Court of Madras in W.P.4095 of 2012 feeling aggrieved against the order of the Commissioner of Customs (Appeals) in common Order-in-Appeal Nos. 468-547/2013 dated 28.03.2013 and against Hon'ble High Court's dismissal order dated 06.11.2014 of their case, subsequently they had approached before the Division Bench in W.A. 425 of 2016 which was also dismissed vide Hon'ble High Court's order dated 06.02.2016 on the grounds of alternate remedy available to them. The said case was appealed before the Tribunal, and after the case was finally heard the Co-ordinate Bench of the Tribunal at Chennai, wherein it had passed the Final Order No. 40419/2024 dated 15.04.2024, by holding that the exemption benefit at Serial No.4 of Notification 25/2005-Customs dated 01.03.2005 is eligible to the goods i.e., UPS imported by them.

3.2 Learned Advocate submitted that the since there is no dispute in classification of imported goods declared by the appellants, and all the grounds based on which the impugned order had denied the customs duty exemption have been examined by the Tribunal in its order dated 15.04.2024, he submitted that the disputed issue is no more *res integra*. Hence, he pleaded that the impugned order is not legally sustainable.

3.3 In support of their stand, learned Advocate had also relied upon following decisions of the Tribunal in the respective cases mentioned below:

(i) *Luminous Electronics Private Ltd. Vs. Commissioner of Central Excise, New Delhi* – 2001 (129) E.L.T. 605 (Tri.-LB) upheld by Hon'ble Supreme Court in Civil Appeal No. 342/2002.

(ii) *JK Synthetics Ltd. Vs. Commissioner of Central Excise, Jaipur* - 2003 (152) E.L.T. 35 (S.C.)

(iii) *Cyber Power Systems India Vs. Commissioner of Customs (Port), Kolkata* – (2024) 19 Centax 219 (Tri.-Cal)

(iv) CBIC Circular No.01/2005-Customs dated 11.01.2005

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs (Appeals) in the impugned order and submitted that since the customs duty exemption is restricted to static converters for specified use, and that the impugned order had dealt with these issues, the appellants are not eligible for the said exemption. Thus, he pleaded for rejecting the appeal filed by the appellants.

5. We have heard the learned Advocate appearing for the appellants and the learned Authorized Representative of the Department and perused the case records, along with additional written submissions in the form of paper books given by both sides.

6.1 The issue involved herein is to decide whether the imported goods viz., 'Uninterruptible or Uninterrupted Power Supply (UPS) system classifiable under Customs Tariff Item (CTI) 8504 4090, is eligible for full exemption from BCD vide Serial No. 4 of Notification No. 25/2005-Customs dated 01.03.2005 or otherwise; and whether consequential confiscation of goods, imposition of redemption fine and penalty on the appellants are sustainable?

6.2 In the impugned order, learned Commissioner of Customs (Appeals) had come to the conclusion that the imported goods are not eligible for customs duty exemption on the basis of the following: (i) notification exempts only 'static converters' for ADP machines and units thereof, and telecommunication apparatus classifiable under CTH 8504 40; (ii) UPS is a combination of both electrical and electronics systems designed to provide a total continuity of AC power even in the absence of mains power, which is different from static converter; (iii) UPS is for use with several machines and equipment and not only for ADP machines, and since exemption entry for 'static converter' refers to limited use, goods having multiple use should not be given exemption benefit.

6.3 In order to address the above issue of eligibility to exemption notification, we would like to refer to the Serial No. 4 of Notification No. 25/2005-Customs dated 01.03.2005 which is extracted and given below:

Notification No. 25/2005-Customs dated 01.03.2005, as amended

EXEMPTION TO SPECIFIED GOODS OF CHAPTERS 84 AND 85

*****

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts following the goods of the description specified in column (3) of the Table below and falling within the heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely:-

Table

S. No.	***Heading, Sub - heading or Tariff item***	***Description of goods***
xx	*xxx*	*xxx*
4	*8504 40*	*Static converters for automatic data processing machines and units thereof, and telecommunication apparatus, other than static converters for cellular mobile phones"*

6.4 On plain reading of the exemption entry at Serial No.4, it transpires that the scope of the goods covered under the above exemption would cover all 'static converters' classifiable under sub-heading 8504 40. In the impugned order at paragraph 9, it is specifically recorded that there is no dispute that the imported goods are covered under the specified sub-heading/tariff item in terms of the notification as it states:

> *"9. I find that there is no dispute of classification of impugned goods and the same has been correctly classified under CTH 8504."*

6.5 Further, on careful analysis of the goods covered under the exemption, it is also noticed that the description of goods, broadly specified two category of goods viz., (i) Static converters for automatic data processing machines and units thereof, (ii) Static converters for telecommunication apparatus. However, Static converters for cellular mobile phones alone was excluded from the scope of the above exemption entry. This would be evident from perusal of the original exemption entry as it was introduced vide Notification No. 25/2005-Customs dated 01.03.2005 and later amended vide Notification 67/2007-Customs dated 14.07.2017, which are extracted and given below:

Exemption entry of Sl. No. 4 at the time of issue of original Notification No.25/2005-Customs dated 01.03.2005

Notification
No.25 /2005-Customs

New Delhi dated the 1st March, 2005
10 Phalguna, 1926(Saka)

G.S.R. (E).-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts following the goods of the description specified in column (3) of the Table below and falling within the heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely:-

Table

S. No.	Heading, Sub – heading or Tariff item	Description of goods
(1)	(2)	(3)
1.	8472 90	Automatic teller machines
2.	8473 10 00	Printed circuit assemblies of word processing machines
(1)	(2)	(3)
3.	8473 40	Printed circuit assemblies for automatic teller machines
4.	8504 40	Static converters for automatic data processing machines and units thereof, and telecommunication apparatus

Exemption entry of Sl. No. 4 after amendment vide Notification No. 67/2017-Customs 14.07.2017

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification No. 67/2017 – Customs

New Delhi, the 14th July, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 25/2005-Customs, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 123(E), dated the 1st March, 2005, namely :-

In the said notification, in the Table, for serial number 4 and the entries relating thereto, the following serial number and entries shall be substituted, namely:-

(1)	(2)	(3)
"4.	8504 40	Static converters for automatic data processing machines and units thereof, and telecommunication apparatus, other than static converters for cellular mobile phones".

[F.No.354/20/2017-TRU]

(Gunjan Kumar Verma)
Under Secretary to the Government of India

Note: The principal notification No. 25/2005-Customs, dated the 1st March, 2005 was published in the Gazette of India, Extraordinary, Part II, Section-3, Sub-section (i), *vide* number G.S.R.123(E), dated the 1st March, 2005 and was last amended by notification No. 15/2012-Customs, dated the 17th March, 2012 *vide* number G.S.R. 188 (E), dated the 17th March, 2012.

6.6 On reading the statutory provisions, it would transpire that the First Schedule to the Customs Tariff Act, 1975 specify various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). When such tariff is read with General Rules for Interpretation (GIR) and the General Explanatory notes (GEN), proper classification of goods are arrived at by taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

6.7 On the above basis, we have examined the scope of coverage of goods under various sub-heading/tariff items of sub-heading 8504, which are extracted and given below:

"Tariff Item	**Description of goods**
(1)	(2)
8504	***ELECTRICAL TRANSFORMERS, STATIC CONVERTERS (FOR EXAMPLE, RECTIFIERS) AND INDUCTORS***
xxx	*xxx*
8504 40	***- Static Converters***
8504 4010	--- Electric Inverter
	--- *Rectifier:*
8504 4021	---- Dip bridge rectifier
8504 4029	---- Other
8504 4030	--- Battery chargers
8504 4040	--- Voltage regulator and stabilizers (other than automatic)
8504 4090	--- Other
xxx	*xxx"*

On plain reading of the description of the goods covered under six tariff items of the sub-heading 8504 40 for 'static converters' it clearly transpires that various type of goods such as (i) electric inverter, (ii) dip bridge rectifier, (iii) other rectifiers, (iv) battery chargers, (v) voltage regulators and stabilizers of other than automatic type, (vi) other static converters of the type not mentioned above, are all covered under the scope of sub-heading 8504 40 covering the description 'static converter'. This is also clear from the General Explanatory notes to import tariff, which state that '*Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "- -", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--"' .* Therefore, all four "---" tariff entries and two "----" tariff entries in the above table, are covered under the scope of "-" entry 'Static converter' of 8504 40. Therefore, we of the view that all the above mentioned goods are eligible for the exemption entry under Serial No. 4 of Notification No. 25/2005-Customs dated 01.03.2005. The only exception to the above is the 'static converters' for cellular mobile phones, as it was specifically excluded from the scope of the above exemption entry, vide amending Notification 67/2007-Customs dated 14.07.2017. In the present case, the imported goods are Uninterruptible Power/Uninterrupted Power Supply (UPS) System which are nothing but 'static converter' that are integrated with external batteries to provide the power backup feature, while drawing power from the main supply to the connected ADP, telecommunication apparatus, while having the additional feature of continuous power supply even when the main supply is not available or during power failure from such main supply. The impugned goods are therefore not covered under the scope of excluded category, which are for use with cellular mobile phones. From the above analysis of the imported goods and the scope of coverage of goods under the sub-heading 8504 40, and the exemption entry vide Serial No. 4 of Notification No. 25/2005-Customs dated 01.03.2005, as amended, we are of the considered view that the impugned order denying the customs duty exemption benefit to the imported goods in the present case, does not stand the legal scrutiny.

7. In this regard, we find that the Co-ordinate Bench of the Tribunal in the case of self-same appellants vide Final Order No. 40419/2024 dated 15.04.2024 have carefully examined various objections raised by the department in disallowing the custom duty exemption to the appellants. On analysis of the various case laws on the issue, the Tribunal had come to the conclusion that denial of such customs duty exemption under Serial No. 4 of Notification No. 25/2005-Customs dated 01.03.2005 is not justified, and therefore set aside the order of the Commissioner (Appeals). The relevant paragraphs of the said order is extracted and given below:

> *"8. Heard both sides. The issue to be decided is whether the appellant is eligible for the benefit of exemption at Serial No.4 of the Notification 25/2005 dated 01.03.2005. The relevant notification has already been noticed in first para above. The department has denied the exemption stating that the appellant has not furnished evidence to prove that the imported goods (static converters / UPS) are meant for use only for automatic data processing machine and telecommunication apparatus. The Ld. Counsel for appellant submitted that the importer being a trader is not able to vouch the end use of the imported goods. It is asserted by the Ld. Counsel that there is no such end use / actual use condition in the notification. On perusal of the notification it can be seen that the words of the notification read as 'Static converters for automatic data processing machines and units thereof, and telecommunication apparatus'. It is not disputed by the department that the imported goods are capable for use in ADP machines. The benefit of exemption has been denied stating that these goods can be put to use for other purposes also. The notification does not say that the goods have to be used only for IT industry as alleged by the department. The words of the notification are very clear and does not give rise to any ambiguity. When there is no ambiguity in the language of the notification the benefit of the concessional rate of duty cannot be denied by adding words into the notification.*
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> *9. The Commissioner (Appeals) observed that the appellant has not furnished any evidence, vouching the end use and has not fulfilled condition of notification. In the reply dated 11.01.2012 the appellant submitted that there is no such condition stipulated in the notification therefore not able to execute such a end use bond. In para 17 it is noted by the adjudicating authority that the goods are not eligible for benefit of the notification as the goods are not meant for use only for automatic data processing machines and telecommunication apparatus. The relevant finding of the adjudicating authority in para 17 is reproduced as under:-*
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>> *With the facts and circumstances regarding the said notification, which is for ITA bound goods and the importer's inability to qualify the imported goods as only for automatic data processing machines and telecommunication apparatus use, the importer's claim for duty exemption under said notification is not acceptable.*

10. The Commissioner (Appeals) has taken a similar view while upholding the order of the adjudicating authority. The finding of the Commissioner (Appeals) is as under:

> *From the plain reading of the above it is clear that the intention of the Government is to exempt either the goods which are directly used in the IT industry or such goods required for manufacture of the above goods subject to end-use condition are only exempted for the payment of basic customs duty. The assessee being a trader had not come out with any un-impeachable evidence to show that the impugned goods are directly used only in the IT industries. The appellant being a trader cannot vouchsafe that the goods will be used only in the IT industries. With such an uncertainty the condition and purpose of the notification cannot be fulfilled.*

11. The adjudicating authority as well as the Commissioner (Appeals) has relied on the Explanatory notes of the budget speech to hold that the object of the notification was to exempt goods for IT and Telecommunication industry only. The notification does not use the word 'only'. When the plain language of the notification is clear and unambiguous, the department ought not to have relied on extraneous aids to interpret the notification.

12. The appellant has furnished the catalogue of the goods before us. The same is reproduced as under:

xxx xxx xxx

13. The above would show that the goods imported are nothing but UPS/Static Converters and capable of use for connecting to automatic data processing machines.

14. The very same issue was considered by the Tribunal in the case of M/s. Cyber Power Systems India Vs. Commissioner of Customs (Port), 2024 (2) TMI 875 CESTAT Kolkata. The relevant para reads as under:

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15. (incorrectly mentioned as 12) In the case of Escorts Limited Vs. Collector of Customs, 1990 (47) ELT 68 (T) the question considered was whether the concessional duty can be denied merely because the equipment used for testing purpose in the automotive industry is also usable for general purpose. The Tribunal answered in the negative and in favour of the assessee. The relevant para of the decision is as under:

xxx xxx xxx

16. (incorrectly mentioned as 13) In the case of Daga Nylomet Private Ltd., Vs. Asst. Collector of Customs, 1993 (67) ELT 270 (Cal.) The Hon'ble High Court considered the meaning of the word 'for' used in TH 84.45 and held that it does not mean actual use. the relevant discussion of the Hon'ble High Court is as under:

xxx xxx xxx

17. (incorrectly mentioned as 14) The Tribunal in the case of Sha Harakchand Dharmaji Vs. Commissioner of Customs, Madras, 1996 (88) ELT 764 (T) had occasion to consider similar issue as to the meaning of *the words 'for use' in the leather industry. It was held by the Tribunal that for use does not mean actual use and that the importer cannot be burdened for establishing a condition of actual goods. The relevant paras reads as under:*

xxx xxx xxx

18. (incorrectly mentioned as 17) From the above discussions we are of the considered opinion that the denial of exemption benefit is not justified. The goods are eligible for exemption of the benefit at Serial No.4 of Notification No.25/2005. The impugned order is set aside. The appeal is allowed with consequential relief if any."

8. We also find that the impugned order at paragraph 7.9 in relying on the decision of the Hon'ble Supreme Court in the case of *Liberty Oil Mills Pvt. Ltd. Vs. Collector of Central Excise* – 1995 (75) E.L.T. 13 (S.C.) having been quoted in the judgement of the Hon'ble Madras High Court in the W.P. No.18676 of 2013 in the case of Socomec UPS India Pvt. Ltd. for denying the exemption benefit, is incorrect. This is for the reason that the facts referred to in the relied upon case are different, and it is applicable only in a situation where there is an ambiguity or doubt regarding an exemption provision and it has stated how the same should be resolved. This is not applicable in the present case, since there is no doubt about the scope of coverage of the goods under the exemption entry, and vide amending Notification No. 67/2007-Customs dated 14.07.2017, the scope of exemption was subsequently restricted by excluding 'static converters' for cellular mobile phones. In any case, after the outcome of this case, the Tribunal has passed the Final order dated 15.04.2024 extending the exemption to the appellants. The relevant paragraph of the said judgement of Hon'ble Madras High Court is reproduced below:

"18. *In any each bill of entry has to be independently assessed and there is sufficient jurisdiction for the Assessing Officer to call for the information from the importer, more so, when the importer claims full exemption of basic Customs Duty, by placing reliance on the notification. The onus is on the importer to satisfy that the imported goods falls squarely within the four corners of the exemption notification. If the petitioner fails to prove the same, it is not entitled for the benefit of the exemption notification and the settled legal principles being that an exemption notification shall be interpreted strictly. The petitioner has not denied the information, which has been uploaded in its website, which shows that the product is capable of being put to multiple use, which is not contemplated under Notification No. 25 of 2005, under Heading 8504 40, which describes the goods as "static converters" for automatic data processing machines and units thereof and telecommunication apparatus. Thus, it appeals that the exemption notification is specific pertaining to static converters for automatic data processing machines and telecommunication apparatus. Therefore, if it is the case of the petitioner that though the product is capable of multiple use* *or used for automatic data processing machines or telecommunication apparatus, nothing prevented the petitioner from establishing the same and one such method is producing an end-use.*

19. *The Hon'ble Supreme Court, in the case of Liberty Oil Mills Pvt. Ltd. v. Collector of Central Excise, reported in 1995 (75) E.L.T. 13 (S.C.) held that in a case of an ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of the Revenue and not in favour of the assessee. In any these contentions could very well be raised before the Appellate Authority and the petitioner has not placed any material before this Court to justify its action in by-passing the appellate remedy available under the Act.*

20. *In the light of the above findings, this Court is not inclined to go into the merits of the contentions raised by the petitioner and the writ petition is dismissed, as not maintainable. However, it is open to the petitioner to file an appeal before the CESTAT, if so advised. No costs."*

9. We further find that the Larger Bench of the Tribunal in the case of *Luminous Electronics Private Ltd.* (supra) have held that the principal function of the UPS/ UPSS is 'static converter' irrespective of its multi-use and also decided its classification under sub-heading 8504. The relevant paragraphs of the said order is extracted and given below:

"11. A machine which has got multi-function must be classified according to its principal function. The principal function as far as UPSS is concerned is of a static converter. When it is so understood, relying on the interpretative rules, it can be classified invoking Rule 3 therein as falling under sub-heading 8504. As observed by the Apex Court in Dunlop India Ltd. & Madras Rubber Factory Ltd. v. Union of India - 1983 (13) E.L.T. 1566*, "when an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause". When UPSS falls under 8504 as an enumerated item, it cannot be consigned to an orphanage of the residuary clause 8543.*

12. In view of what has been stated above, it is our considered opinion that Uninterrupted Power Supply System is classifiable under Tariff sub-heading 8504 as contended by the manufacturer and not under 8543 as taken by the departmental officers. The result therefore is that the orders impugned in this appeal are set aside in their entirety."

In an appeal filed by the department against the above order of the Tribunal, heard by the Hon'ble Supreme Court along with the case of J.K. Synthetics (supra) it had dismissed the Civil Appeal No.9175 of 1995. The relevant order of the Hon'ble Supreme Court is extracted below:

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IN THE SUPREME COURT OF INDIA@@
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CIVIL APPELLATE JURISDICTION@@
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CIVIL APPEAL NO.9175 OF 1995@@
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M/s. J.K.Synthetics Ltd. ...Appellant(s)

versus

Commr. of Central Excise, Jaipur ...Respondent(s)

With

C.A.Nos.4215/1997, 4192-96/2000, 2872/2001 & 342/2002@@
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C.A.No.342/2002:@@
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We have heard learned counsel for the appellant-Revenue. This is essentially a matter of classification. The Tribunal is the best judge of classification, especially so when the decision is a decision of five Members of that bench, based upon all available material including earlier circulars of the Board and the HSN classification.

The civil appeal is dismissed.

C.A.Nos.9175/95, 4215/1997, 4192-96/2000 & 2872/2001:@@
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Having regard to the fact that we have dismissed the appeal against the decision of the Tribunal in the case

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of Commissioner of Central excise vs. M/s. Luminuous@@
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Electronics (P) Ltd. (Civil Appeal No.342/2002), which@@
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decision we approve, these appeals must be allowed.

Order accordingly.

All available refunds shall be made within a period of eight weeks.

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(N. SANTOSH HEGDE) @@
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10. We also find that the Central Board of Excise & Customs (CBEC) had examined the issue raised by the field formations in restricting the custom duty exemption in case of general purpose machines, unless these are designed for specific use in such industry/application vide Circular No.1/2005-Customs dated 11.01.2005. It was clarified therein that for the purpose of uniformity in assessment of goods, customs duty exemption should be extended, if it established that these are capable of such use and actual use in such specific industry is not required, as the notification does not provide for such restriction. The relevant portion of the said circular is extracted and given below:

"Circular No. 1/2005-Cus., dated 11-1-2005

F.No. 528/78/2004-Cus(TU)
Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Clarification on various Tariff Issues - Regarding.

I am directed to say that divergence of practice regarding various Tariff related issues has been brought to the notice of the Board. A number of such matters were discussed at the Tariff Conferences of Chief Commissioners of Customs held at Kolkata on 22nd and 23rd January, 2004 and Shillong from 13th to 15th May, 2004. On the basis of the recommendations of these Tariff Conferences, draft circulars were prepared and put up on the Deptt.'s web-site (www.cbec.gov.in) and also circulated to various trade bodies for giving it wider publicity. Various parties were asked to give their comments and feedback on the draft circulars within 3 weeks. Board has taken decisions on these issues after considering the feedback received.

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(iii) Subject: Eligibility of general purpose Labelling Machine under Notification No. 21/2002-Cus., dated 1-3-2002 for use in Textile Industry.

Issue in Brief : *This matter was discussed in the Tariff Conference of Chief Commissioners of Customs held at Kolkata on 22nd and 23rd January, 2004 [Agenda Point N-8]. Concessional rate of duty of 5% is extended to specified machinery/equipment which are meant for use in textile industry vide S. No. 250 of Notification No. 21/2002-Cus., dated 1-3-2002. List 30 of the said Notification specifies labeling machine at Sl. No. 84 therein. The intention of the Notification is to allow concessional duty for labeling machines which are* ***for use in textile industry.*** *The field formations have noticed import of Labeling machines of general purpose which can be used not only in textile industry but also in other industries. Labeling machines, imported by trading firms are normally used for general purposes and not in textile industry alone. But importers of such machines are claiming concessional rate of duty under the said notification by declaring them as machinery/equipment for use in textile industry. Rejection of the claim of the importers may not be found sustainable as the imported labeling machines can be used also in textile industries. Labeling machines being an* *omni-bus term, the Notification gives room for unscrupulous importers to avail of unintended benefit.*

Decision : *The Board deliberated upon the language of the notification. The expression used in the notification is "…………..goods for use in the textile industry". The notification, therefore, does not appear to restrict the concession to only those machinery or equipment which was 'specifically designed for use' in the textile industry. The notification allows the import of general purpose machinery also as listed in List 30 so long as they are capable of use in textile industry. It has accordingly been decided that 'general purpose labelling machine' was eligible for exemption under S.No. 250 of Notification No. 21/2002-Cus., dated 1-3-2002, if it could also be used in the textile industry."*

11. In view of the foregoing discussions and analysis, and on the basis of the orders of the Tribunal and the judgements of Hon'ble Supreme Court as discussed above, we are of the considered view that the impugned goods viz. 'Uninterruptible or Uninterrupted Power Supply (UPS) system classifiable under Customs Tariff Item (CTI) 8504 4090, is eligible for full exemption from BCD vide Serial No. 4 of Notification No. 25/2005-Customs dated 01.03.2005. Accordingly, the impugned order dated 16.03.2023 to the extent it had upheld the order of the original authority in denying the aforesaid customs duty exemption, confiscation of the imported goods and imposition of redemption fine and penalties on the appellants, does not stand the scrutiny of law and therefore is not legally sustainable.

12. In the result, by setting aside the impugned order dated 16.03.2023 the appeal is allowed in favour of the appellants.

(Operative portion of the order pronounced in the open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha