

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH – COURT NO.405

Custom Appeal No. 85821 of 2016

(Arising out of Order-in-Original No. CAO No. Pr. CC-DS/13/2015-16 Adj (I) ACC dated 22.12.2015 passed by the Principal Commissioner of Customs (Imports), Mumbai)

M/s Shri Rajendra Seksaria

.....Appellant

Balaji Solutions Pvt Ltd
Plot No. 2F/11 Action Area II
New Town-Rajrahath
Block-4B 9th floor
Unit No. 902 Kolkata-700156

VERSUS

CC(ACC & Import) Mumbai

.....Respondent

Air Cargo Complex Sahar
Andheri(East)
Mumbai Pin Code-400099

WITH

Custom Appeal No. 85822 of 2016

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APPEARANCE:

Mr. T Viswanathan, Advocate for the Appellant
Mr. Ramesh Kumar, Assistant Commissioner Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 86419-86420/2021

Date of Hearing: 25.03.2021

Date of Decision: 18.06.2021

PER: AJAY SHARMA

These Appeals have been filed against the order dated 22.12.2015 passed by the Principal Commissioner of Customs (Imports), Mumbai as Order-in-Original No. CAO No. Pr. CC-DS/13/2015-16 Adj (I) ACC.

2. The issue involved is about classification of External/Portable Hard Disc Drives. The Appellants classified the same under CTH 84717020 as *'Hard Disc Drive'*, whereas according to department it has to be classified under Tariff Item 84717030 as *"Removable Disc Drive"* and the same was confirmed in the impugned order in which it was ordered to be classified under CTH 84717030.

3. The Appellants are engaged in import of External Hard Disc Drives, Internal Hard Disc Drives and other computer parts and peripheral through Kolkata Port. As per intelligence received by DRI, the Appellants had evaded customs duty by mis-declaring *Removable or exchangeable disc drives* under CTH 8471 7020, which are classifiable under CTH 8471 7030, for wrongly availing exemption provided by notification No.06/2006-CE, dated 01.03.2006 (till 16.03.2012) and Notification No. 12/2012-CE dated 17.03.2012 thereafter. After investigation, a show cause notice dated 29.08.2013 issued by Additional Director General, DRI to the Appellants u/s. 28 of the Customs Act, 1962 for not classifying the External/Portable Hard Disc Drives under CTH/CETH 8471 70 30 and for demanding

the differential duty alongwith interest and penalty and also for confiscating the goods. The classification as claimed in the show cause notice issued by DRI as well as the duty alongwith interest and penalty was confirmed by the learned Principal Commissioner vide impugned order dated 22.12.2015.

4. Learned counsel for the Appellants submit that the issue is squarely covered in appellant's favour in view of the decision of the Tribunal in the matter of *Commr. of Customs, New Delhi vs. Supertron Electronics P. Ltd.; 2017(357) ELT (Tri.-Del.)* which was later upheld by the Hon'ble Supreme Court by dismissing the Appeal filed by Revenue against the aforesaid decision i.e. *Commissioner vs. Supertron Electronics P. Ltd.; 2018(360) ELT A325 (SC)*. According to learned counsel the aforesaid decision of the Tribunal in *Supertron Electronics (supra)* was followed by the Tribunal in numerous decisions thereafter. Per contra learned Authorised Representative reiterated the findings recorded in the impugned order and prayed for dismissal of Appeal filed by the Appellants.

5. We have heard learned Counsel for the appellant and learned Authorised Representative for the Revenue and perused the case records including the case-laws cited by the respective sides. We have also gone through the decision of this Tribunal in the matter of *Supertron Electronics (supra)*. The extract of relevant paragraph of the aforesaid decision is as under:-

" xxx xxx xxx

4. *We have heard both sides and perused the appeal records. We have also examined the samples of impugned goods as well as sample of removable or exchangeable disk*

drive during the course of hearing. We note that the classification of external hard disk drive assumes significance because of concessional rate of duty available to only hard disk drive not to removable or exchangeable disk drives. The Revenue considers the imported items under 847170 30 whereas the impugned order by the Commissioner(Appeals) held the product under Heading 8471 70 20. The latter entry is eligible for concessional CV duty. We have examined the impugned order and grounds of appeal, closely. First of all, we note that the exemption notification specifies tariff heading up to six digits only, 8471 70 which covers both, hard disk drive and removable or exchangeable disk drives. Further, the next column of the table for description explain the goods only as hard disk drive among many other items. On careful consideration of the technical specification furnished, and the sample of imported items along with tariff entries and the exemption notification, we are in agreement with the findings in the impugned order. The terms hard disk drive used in the notification has not been amplified either by adding "external" or "Internal". On this simple premise alone, exemption to the said item cannot be denied. Admittedly, the imported items are hard disk drive and are meant for external use with computer or lap-top as plug-in device. They are portable hard disk drive. The contention of the Revenue that they are only removable or exchangeable disk drive, is not factually or technically correct. We have perused sample of such removal or exchangeable disk drives. They have full drive mechanism in which storage media is inserted and along with such media can be removed and inserted in computer for usage. We have also perused the technical literature of the manufacturer of the impugned goods. Further, the technical opinion given by the Ministry of Communication and Information Technology, is directly on the issue. We find that in the appeal, the Revenue contested the factual findings in the impugned order. Guided by the expert opinion of the concerned Ministry and facts recorded in the

impugned order, we do not find it fit to interfere with the impugned order.

5. *The appeal by Revenue is dismissed."*

The aforesaid decision was upheld by the Hon'ble Supreme Court and in other decisions also, as cited by learned counsel for the appellants, a consistent view has been taken by the Tribunal that imported External/portable hard disk drive are classifiable under Tariff Item 8471 70 20 as *Hard disk* drives and not under Tariff Item 8471 70 30. Therefore we are of the considered opinion that the instant issue about classification of External/Portable Hard Disc Drives is no more *res integra* and the appellants have rightly classified them under CTH 8471 7020.

6. Recently the Hon'ble Supreme Court in the matter of *Civil Appeal No. 1827/2018; M/s. Canon India Pvt. Ltd. vs. Commissioner of Customs*, vide Judgment dated 9.3.2021 while following its own decision in the matter of *Commissioner of Customs vs. Sayed Ali & Anr.; (2011) 3 SCC 537* has laid down that Additional Director General, DRI cannot be said to be a *proper officer* under section 2(34) of Customs Act, 1962 and held that the entire proceedings initiated by ADG, DRI by issuing various show cause notices are invalid without any authority of law and liable to be set aside. In the instant case also the show cause notice was issued by the Additional Director General, DRI under Section 28 *ibid*, which as per the aforesaid decision of the Hon'ble Supreme Court is without any authority of law and therefore the Appeals also deserve to be allowed on this ground itself.

7. In view of the discussions made hereinabove, the appeals filed by the Appellants are allowed with consequential relief, as per law.

(Order pronounced in the open Court on 18.06.2021)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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