

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

CUSTOMS APPEAL No.386 of 2011

[Arising out of Order-in-Appeal No.C.Cus.No.640/2011 dated 13.09.2011 passed by the Commissioner of Customs (Appeals), No.60, Rajaji Salai, Custom House, Chennai 600 001]

M/s. ACD Communication Pvt. Ltd.

Appellant

Plot No.43, IDA Phase-I, Cherlapally,
Hyderabad-500 034.

Vs.

Commissioner of Customs (Port-Import)

Respondent

Custom House,
No.60, Rajaji Salai
Chennai 600 001.

APPEARANCE:

Shri Raghavan Ramabadran, Advocate for the Appellant

Shri R. Rajaraman, Assistant Commissioner (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Hon'ble Mr. Vasa Seshagiri Rao, Member (Technical)

FINAL ORDER NO. 40185 / 2023

Date of Hearing: 02.02.2023

Date of Pronouncement: 22.03.2023

Per : Ms. Sulekha Beevi C.S.

Brief facts of the case are that appellant M/s.ACD Communications Pvt. Ltd. imported and cleared goods declared as "12V SMPS consisting of Main PCB, lightening protector, DC/AC cables, fuse/fuse holders and others" vide Bill of Entry dated 03.03.2007. The goods were sold on High Sea Sale basis by ICOMM Tele Ltd. to the appellant herein. At the stage of scrutiny in the Post Clearance Audit (PCA), it was noticed that the goods had been

classified under CTH 85299090 as parts of IFWTs operating on cellular technology and claiming benefit of Customs Notification No.21/2005-Cus. dt. 1.3.2005 and Notification No.6/2006-CE dt. 1.3.2006 at 'Nil' rate of duty. As per Notification No.21/2005, parts, components and accessories of mobile handsets including cellular phones are exempted from Customs duty. The Department was of the view that the imported goods are nothing but parts of Switch Mode Power System (SMPS) classifiable under CTH 85049090 which is a specific tariff heading for parts of electrical transformers, converters, inverters, uninterrupted power supply system (UPS), voltage stabilizers, regulators and inductors. The imported goods did not appear to be complete unit of SMPS. Batteries, metal casting etc. was required to make a complete unit of SMPS. In Notification No.25/2005-Cus. dt. 01.03.2005, the entry under CTH 85299090 against Sl.No.16 refers to 'Parts'. Again in respect of Central Excise Notification No.6/2006-CE dated 01.03.2006, the entry under Chapter 85 or any other Chapter against Sl.No.31 refers to "Parts, components and accessories of mobile handsets including cellular phones". It appeared that the goods imported are parts of "Switch Mode Power System (SMPS)" and not "parts of mobile handsets and cellular phones/fixed wireless phones. Show cause notice was issued proposing to reclassify the goods under Section 85049090 and for demanding the differential duty along with interest. After due process of law, the original authority determined the goods to be classified under CTH 85049090 and thereby denied benefit of

Customs Notification No.21/2005 and Central Excise Notification No.6/2006. The proposal for demand of differential duty of Rs.55,87,185/- was confirmed. The appellant filed appeal against the said order and vide impugned order herein, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. Learned Counsel Shri Raghavan Ramabhadran appeared and argued on behalf of appellant. He submitted that appellant is engaged in the manufacture of telecommunication Instruments. The appellants obtained a contract for supply of 11,05,636 Nos. of 2000 1x WLL CDMA Integrated Fixed Wireless Telephones (IFWT) from BSNL. The scope of the supply included IFWT subscriber terminals along with SMPS Power system, RF Feeder Cables, antenna, connectors, Patch panel antenna, accessories (without internal battery). In order to make network connectivity more accessible for rural areas and considering the lack of private players in the said segment, the Department of Telecommunications introduced the New Telecom Policy of 1999 to encourage the development of telecom in rural areas in order to make it more suitable by making suitable tariff structure changed. In order to execute the aforesaid objective, Bharat Sanchar Nigam Limited was corporatized with effect from 01.10.2000. To implement the telecom policy of enhancing rural telephony, BSNL placed a Purchase Order for IFWTs on the Appellant. As per the purchase Order, the IFWT shall include subscriber terminals, SMPS power system, RF Feeder Cable, antenna, etc. as per the Bill of Materials.

3. Ld. Counsel submitted that the IFWTs work on wireless technology (CDMA) and were not connected by telecom cables to the telephone exchanges. They were designed to work on 12V DC power. The SMPS integrated with the IFWT ensured that the power supplied to IFWT was constantly regulated and would not exceed 12V in order to ensure continued functioning of the IFWT.

4. It is explained that to manufacture and supply these IFWTs, the Appellant imported various components of the IFWTs including the components of the 12V SMPS such as Main PCB, lightening protector, DC/AC cables, fuse/fuse holders and others vide Bills of Entry No. 409113 dated 03.03.2007. The goods imported were clearly described as 'Parts of Integrated Fixed Wireless Phone Operating on Cellular Technology (Model No. ACP 606) 12V' SMPS consisting of Main PCB, lightning protection, DC/AC cables, fuse/fuse holder and others' (subject goods).

5. The Appellant classified the subject goods under Tariff Item 85299090 and claimed the benefit of exemption from Basic Customs Duty (BCD) under the Notification No. 21/2005-Cus. and from Countervailing Duty (CVD) under the Notification No. 6/2006 CE. The exemption was subject to the importers following the procedure prescribed under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 ('1996 Rules'). Though the Appellants had claimed the CVD exemption under Notification 6/2006-CE, the exemption was also available under Notification 21/2005-Cus.

6. Vide the Impugned Order-in-Appeal dated 13.09.2011 (Impugned Order), the Ld. Commissioner has held that the subject goods are ineligible for the exemption under the above Notifications on the ground that though the subject goods are parts of SMPS, these are not directly parts of IFWT. The view of the department is that since benefit under the Notification is available only to parts, components and accessories of mobile handsets including cellular phones, the benefit cannot be extended to parts of SMPS which are not directly parts of IFWT. On the basis of the above conclusions, the Ld. Commissioner has confirmed the differential duty to the tune of Rs. 55,87,175/- in respect of the subject goods.

7. The Ld. Counsel explained the working and function of SMPS to argue that SMPS is integral to function of IFWT. The SMPS is designed for use solely with the IFWT. The IFWT requires 12V DC for its functioning. The SMPS provides the 12V DC power after conversion of the alternating current (AC) from the main power line to direct current (DC) and also at the same time, stepping down the voltage to 12V. A Float charger in the SMPS also charges a 12V – VRLA battery placed inside SMPS cabinet. When there is a disruption in the main power supply, the battery will take over and supply the DC power to the IFWT. As soon as the main power line is restored, the float charger will take over and supply regulated power to the IFWT. Thus, the 12V SMPS is an integral component of the IFWT without which the IFWT will not function nor is the IFWT complete without the 12V SMPS.

8. Ld. Counsel urged that in this context, it is pertinent to note that the final product manufactured and sold by the Appellant to BSNL was an IFWT consisting of fixed landline, SMPS and other goods for operation of telephone which is also evident from the perusal of sample copies of excise invoices. Since the combination of all machines (SMPS, IFWT, etc.) contributed towards a single defined function, i.e., to function as telephones, the goods were classified as a cellular phone under Central Excise Tariff Entry 8517 11 90. The classification of final product (IFWT) has also not been disputed by the Department. Thus, it is submitted that the SMPS which continuously regulates the power supplied to the IFWT is an integral constituent part of the IFWT without which the IFWT is incomplete.

9. Resultantly, the Appellant submits that the subject goods which are used in the manufacture of SMPS must be considered as parts of cellular telephone. It is pertinent to note here that the benefit of Notification No. 21/2005-Cus., is available to all parts, components and accessories, regardless of the classification. Thus, the test to be adopted is to determine whether the subject goods are parts of IFWT.

10. In the instant case, the SMPS manufactured by the Appellant are made in accordance with GR No. GR/SMP-02/01 JAN 2004 ("GR") which specifically provides that requirements must be met for the manufacture of a 12V SMPS intended for use with CDMA FWTs. The said GR exhaustively covers the general technical requirements including the system configuration to which the SMPS must adhere

to. The subject goods imported in the instant case, correspond to these system configurations mentioned in the Generic Requirement (GR). It is asserted by the Ld. Counsel that in para 9, the Impugned Order accepts that the subject goods are parts of SMPS.

11. Thus, it is submitted that the subject goods intended for manufacture of SMPS must be held to be eligible for exemption since the benefit under the Notification is available to all parts, components and accessories whether or not these are used directly in the manufacture of IFWT.

12. The Ld. Counsel submitted that the Jurisdictional Excise Authorities have not questioned the classification. The Appellant had registered with the Central Excise for the purpose of the 1996 Rules. The jurisdictional Assistant Commissioner of Central Excise accepted the impugned components as parts or components required for the manufacture of CDMA 2000 1x IFWT for voice and two-way SMS, patch panel antenna, 12V SMPS power system, RF Feeder Cables Antenna, connectors and accessories, provided the Annexure – III to the 1996 Rules and has also accepted the bond executed by the Appellant.

13. The Jurisdictional Assistant Commissioner had also issued end use certificate certifying the fact that the subject goods were used for the purpose of manufacture of CDMA 2000 1x IFWT supports voice, two-way SMS, patch panel antenna, 12V SMPS power system, RF Feeder Cables Antenna, connectors and accessories. It is also pertinent to note that the Appellants classified the assembled CDMA

2000 1x IFWT supports voice, two-way SMS, patch panel antenna, 12V SMPS power system, RF Feeder Cables Antenna, connectors and accessories when they removed from their factory to BSNL under CETH 8517. The jurisdictional Central Excise Authorities did not raise any question on the classification adopted while clearing the goods from the factory.

14. The question is as to whether Part of a part is also a part of the whole is well settled that the part of a part is a part of a whole. Therefore, the components of the SMPS imported by the appellants such as Main PCB, lightening protector, DC/AC cables, fuse/fuse holder and others would be eligible for the exemption under Notification No.21/2005-Cus, that covered parts/components of mobile handsets including cellular phones.

15. It is submitted that even if the goods were not classifiable under the Heading 85299090, but classifiable under the CTH 8504 as confirmed by the Commissioner of Customs (Appeals), the appellants are eligible for the benefit of notification claimed as the notification is not restricted to the parts falling under any specific heading.

16. Without prejudice to the above argument, the Ld. Counsel urged that the subject goods are eligible for benefit of exemption as 'accessories'. The impugned goods can qualify as accessories to the IFWT. In this regard, few dictionary definitions were referred by the appellant which are as below:-

Name of the Dictionary	Definition
Oxford Dictionary of English, Third Edition	Accessory – noun (p. accessories) a thing which can be added to something else in order to make it more useful, versatile or attractive: optional accessories include a battery charger and shoulder strap. Origin from medieval Latin accessories ‘additional thing’. Part – a manufactured object assembled with others to make a machine; a component.
Black’s Law Dictionary – Ninth Edition	Accessory - Something of secondary or subordinate importance.
The Law Lexicon by P. Ramanatha Aiyar (4 th Edition, 2010)	Accessories. The term ‘accessories’ is used to describe goods which may have been manufactured for use and an aid or addition. ‘Accessories’ are not necessarily confined to particular machineries for which they may serve as aids. The same item may be an accessory or more than one kind of instrument. Annapurna Carbon Industries v. State of A.P. AIR 1976 SC 1418, 1421. An ‘accessory’ is something supplementary or subordinate in nature and need not be essential for the actual functioning of the product. An object or device not essential in itself but that adds to the convenience or effectiveness of something else.

17. To stress that the imported goods qualify as accessories to IFWT, it is submitted by the Ld. Counsel that SMPS adds to the effectiveness of the IFWT and therefore can qualify as an accessory of IFWT. SMPS was procured by BSNL for application in rural areas wherein there is high voltage fluctuations and regular power cuts.

Without SMPS, regulated supply of power to IFWT is not possible. Furthermore, while telephone can operate without the use of the SMPS, the same cannot be effectively operated without SMPS providing regulated supply either directly from the main line or through internal battery back-up during power cuts. Thus, it is submitted that parts of SMPS can qualify as accessories for use in IFWT.

18. To support his argument, the Ld. Counsel drew assistance from the judgement of the Hon'ble Supreme Court in the case of *State of Punjab v. Nokia India* - 2015 (315) E.L.T. 162 (SC) wherein it was held that battery chargers are accessories of mobile phones.

19. Reliance was also placed on the decision of *Mehra Bros Vs Joint Commercial Officer* -1991 AIR 1017 wherein it was held that seat cover which is a part of a seat has to be treated as an accessory of a motor vehicle. On the basis of these decisions, the Ld. Counsel referred to the decision of the Tribunal in their own case, *ACD Communications Pvt. Ltd.* - 2011 (263) E.L.T. 744 (Tri. – Chennai) and submitted that the said view of Tribunal in their own case no longer lays down the correct position of law.

20. The SMPS is designed for use solely with IFWT which requires 12V DC for its functioning. The SMPS provides the 12V DC power after conversion of the alternating current from the mains to direct current and also at the same time stepping down the voltage to 12V. Further, a Float charger in the SMPS also charges a 12V – VRLA battery placed inside SMPS cabinet. When there is a disruption in the

main power supply, the battery will take over and then supply the DC power to the IFWT. Thus, the 12V SMPS is an integral component of the IFWT without which the IFWT will not function especially considering the unregulated supply of electricity in rural areas.

21. The functions of SMPS which can be used solely with IFWT as explained is summarised as below:

- a. for converting the alternating currents from mains to regulated direct current to the IFWT;
- b. maintain the voltage at 12V.
- c. Charge the 12V – VRLA battery placed inside the SMPS cabinet in order for the battery to take over the supply of DC power to IFWT in case of a main power supply cut.

22. The Ld. Counsel referred to the decision of the Tribunal in their own case *ACD Communications Pvt. Ltd. v. CC - 2011 (263) E.L.T. 744 (Tri. – Chennai)* and explained that the Tribunal while deciding on the applicability of benefit under Notification No. 21/2005 to VRLA batteries, held that the batteries cannot be considered as parts or accessories to IFWT since these batteries do not contribute to the efficiency or effectiveness of the telephone but merely provide power in the absence of electric supply from the mains. In other words, though the Tribunal has recognised that the battery operates as a secondary source as power, the batteries have been held to be not a part or an accessory to IFWT.

23. Ld. Counsel submitted that, however, the function performed by the SMPS is integral to the functioning of the IFWT as the same regulates the supply of power to IFWT. Thus, while battery may be an alternative source of power, SMPS continuously regulates the power supplied to IFWT. Therefore, the decision in *ACD Communications* (supra) cannot be equated to the present case due to the difference in factual scenarios in the matters.

24. Further, subsequent to the decision of the Tribunal in *ACD Communications*, the Hon'ble Apex Court in *State of Punjab v. Nokia India Pvt. Ltd., 2014 (12) TMI 836 - Supreme Court*, held that the charger of a mobile phone is an accessory to the cell phone. Thus, there being a change in law subsequent to the decision of the Tribunal, the decision in *ACD Communications* (supra) cannot be applied to uphold the demand.

25. By applying the decision of the Hon'ble Apex Court, the SMPS which is essential for the functioning of the IFWT must be considered as parts or accessories of the IFWT and the decision of the Tribunal in the case of *ACD Communications* (supra) has no bearing to the facts of the present case. The Ld. Counsel prayed that the appeal may be allowed.

26. Ld. A.R Shri R. Rajaraman appeared for the Department. He supported the findings in the impugned order. The Ld. A.R submitted that the main contention of the appellant is that IFWT cannot function without SMPS. This argument cannot be accepted. The classification adopted by the appellant is incorrect. From the records, it can be

seen that the country of origin certificate indicated the classification of the imported goods as 8504. Appellant declared the goods as 85299090 in the Bill of Entry and claimed benefit of exemption under Customs Notification No.21/2005 (Sl.No.16) and Central Excise Notification No.6/2006 (Sl.No.31).

27. Ld. A.R adverted to paras 9 & 10 of the impugned order. He submitted that CTH 8504 broadly covers electrical transformers, static converters (for e.g. rectifiers) and inductors in the sub and sub-sub headings. It covers various types of the above mentioned items. Specially, CTH 85049090 covers parts of the goods covered under the above CTH. On the other hand, appellants have classified the imported goods under CTH 8529, which covers parts suitable for use solely, or principally with the apparatus of CTH 8525 to 8528. The appellants though have argued that SMPS are parts or accessory of IFWT, have not put forward any arguments as to why they have adopted the incorrect classification. The imported goods may be part of SMPS but are not directly parts of IFWT and therefore appellant cannot claim the benefit of Notification No.21/2005-Cus. The notification exempts only parts, components and accessories of mobile handsets including cellular phones and not parts of SMPS which can be used with IFWT. As SMPS does not directly form part of IFWT, the appellants are not eligible for the benefit of notification. The appellants have misdeclared classification of the goods in order to claim benefit of exemption notification.

28. The Purchase Order dated 10.05.2006 adverted to by the Ld. Counsel for appellant is only expression of interest for purchase of the said telephone instruments (IFWT) along with other equipments by the purchaser viz. BSNL. In para 5.1 of the purchase order it is stated that *"the supply of 3,73,736 Nos. 2000 1X WLL CDMA Integrated FWTs shall include Subscriber Terminals, SMPS Power System, RF Feeder Cable, Antenna Connectors, Patch Panel Antenna, Accessories (without internal battery) etc. as per Bill of Material enclosed"*. The scope of Purchase Order does not support the argument of the appellant that the equipments mentioned therein cannot function independently. Therefore, the reliance placed on the Purchase Order for availment of Notification benefit of duty-free import is futile.

29. It is also submitted by Ld. A.R that as per GR No.GR/RST-01/01 JUN 2004 issued by the Telecommunications Engineering Centre (TEC) specifying generic requirements for CDMA 2000 1X Remote Stations (RS),

"3.1.4. The RS may be of following types:

(i) **Fixed Wireless Terminal (FWT):** FWT is a CDMA 2000 1x radio terminal to which conventional fixed telephony equipment such as telephone instruments, data modem, fax machine, subscriber's call charge meter (Home meter) etc. can be connected externally to access the CDMA network.

(i) **Integrated FWT (IFWT):** *IFWT are fixed wireless terminals wherein telephone instrument is in-built along with a subscriber's call charge meter"*; and

3.6 Power Supply (Sub clauses 3.6.1 to 3.6.10 are applicable to Type A, B and C and Sub clause 3.6.11 is applicable to Type D)

3.6.1 Backup Battery: The remote station shall be provided with in-built maintenance free, sealed type rechargeable battery as part of the equipment and shall be supplied along with the remote station. The

average life time of the battery shall be no shorter than two years. Inbuilt battery voltage and capacity shall be indicated by the supplier for fixed and handheld terminals as applicable.

- 3.6.2 Type of battery: The type of battery and its life time shall be indicated, in case of FWTs and integrated FWTs. In case of handheld terminals, the battery shall be Lithium Ion or polymer based.

....

- 3.6.8 It shall be possible that the Remote Station can be configured to work on either the inbuilt battery or external battery complying to TEC GR No. GR/SMP-02.**

...."

From the above, it is evident that integrated FWT means the integration of Telephone instrument with call charge meter ONLY and NOT with SMPS [Switch Mode Power Supply]. Further, the power is supplied to IFWTs either by the inbuilt battery or external battery complying to TEC GR No.GR/SMP-02 (i.e. external battery present in the SMPS).

30. The appellant claims that the said IFWTs were designed to work on 12V DC power and that SMPS is integrated with the IFWT to ensure power supplied to IFWT which is factually incorrect. The GR No.GR/SMP-02/01 JAN 2004 adduced as evidence by the appellant also does not substantiate appellant's claim.

31. It is submitted that the functioning of SMPS qualifies only for the sole purpose of supply of constantly regulated power by acting as a combined *AC-DC rectifier circuit and DC-DC converter*. Thus, it is emphasized that the SMPS is not an integral part of the IFWT. Accordingly, the claim of the appellant that the IFWTs cannot operate without the SMPS is farfetched and the goods under import are

rightly classifiable under CTH 8504 which deals with parts of 'electrical transformers, static converters and inductors'. The Ld. A.R submitted that the imported goods are neither parts or accessories of IFWT. The question as to whether the imported goods are accessories have not been examined by the adjudicating authority or the Commissioner (Appeals).

32. Ld. A.R prayed that the appeal may be dismissed.

33. Heard both sides.

34. The issue to be decided is whether the appellant is eligible for benefit of Notification No.21/2005-CE (Sl.No.31) with regard to the goods imported and declared as '12V SMPS consisting of main PCB, lightening protector, DC/AC cables, Fuse/Fuse holders and others'.

35. According to the appellant, SMPS is a part of IFWT without which the IFWT cannot function. Learned Counsel for the appellant explained that scope of supply included IFWT subscriber terminals along with Switch Mode Power System (SMPS). It is argued that this SMPS integrated with the IFWT ensured that the power supplied to IFWT was constantly regulated and would not exceed 12V during the functioning of IFWT.

36. On perusal of the purchase order dated 10.05.2006, it can be seen that the requirement to supply SMPS along with IFWT is mentioned in Sl.No.5 which reads as under :

“5. Scope of the PO : 5.1 The supply of 3,73,736 Nos. 2000 1X WLL CDMA Integrated FWT_s shall include Subscriber Terminals, SMPS power system, RF Feeder Cable, antenna,

connectors, Patch Panel Antenna, accessories(without internal battery) etc. as per Bill of Material enclosed vide **ANNEX 'A'**.

5.2 The supplier shall supply any other item required for satisfactory operation to meet the tender condition on free of cost basis.”

36 (a). SI.No.9 of the purchase order gives the price for IFWT.

The details of the price is as under :

“9 Prices : The price for IFWT_s shall be firm. These prices are inclusive of all taxed & duties, i.e. custom duty, Excise Duty, Sale tax, packing, freight, forwarding, insurance etc but excluding octrol/entry tax which shall be paid extra as per actual, wherever applicable. The details of prices is given below:

	Item	Quoted unit price in tender under ref. (in Rs.)	Qty	Total firm value in Rs.
1(a)	CDMA 2000 IX Integrated FWT _s (IFWT _s) supporting voice, two way SMS, Patch Panel Antenna, 12V SMPS power system, RF feeder Cable, antenna, connectors & accessories (without internal battery)	2716.00	2,80,302 Nos.	77,39,13,822.00
1(b)	CDMA 2000 IX Integrated FWT _s (IFWT _s) supporting voice, two way SMS, 12V SMPS Power System, indoor antenna, connectors & accessories (without internal battery)	2505.00	93,434 Nos.	23,40,52,170.00
	Total		3,73,736	100,79,65,992.00

(Overall firm value of this procurement shall be Rs. 100,79,65,992.00 (Rupees Hundred Crores, Seventy Nine Lakh, Sixty Five Thousand, Nine Hundred Ninety two only)

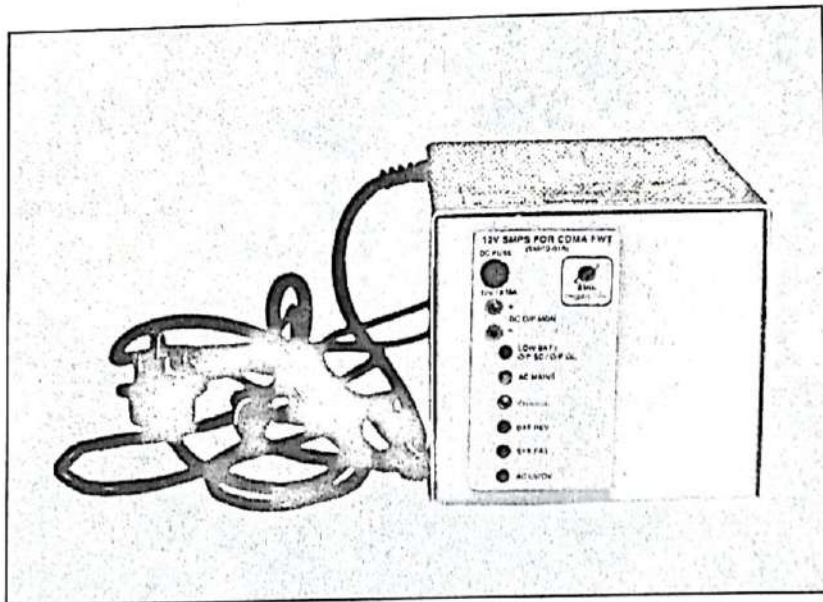
37. The excise invoice shows that the appellant has cleared 12V SMPS which consists of Main PCB lightening protector, DC/AC cables, Fuse/Fuse holder and others from their manufacturing premises. The appellant has furnished a letter dated 10.11.2006 which is a request for permission for import of subject goods. This letter is accompanied by Annexure III which is the compliance of the procedure under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. In the said letter the appellant has referred to Notification No.21/2005-Cus. dated 1.3.2005 and also stated that said notification would apply and the estimated duty payable on the goods imported after availing the notification benefit would be NIL. From the documents, it is clear that the goods imported have been used to make SMPS power system.

38. Before appreciating as to the eligibility of the notification for the goods imported, it would be worthwhile to understand the nature and function of the 12V SMPS. The appellant has produced ICOMM Service Manual showing the image of SMPS as under :



SERVICE MANUAL

(12 V, 2.15 A SMPS for CDMA FWT / IFWT)
(Model No.: SMPS-01A)



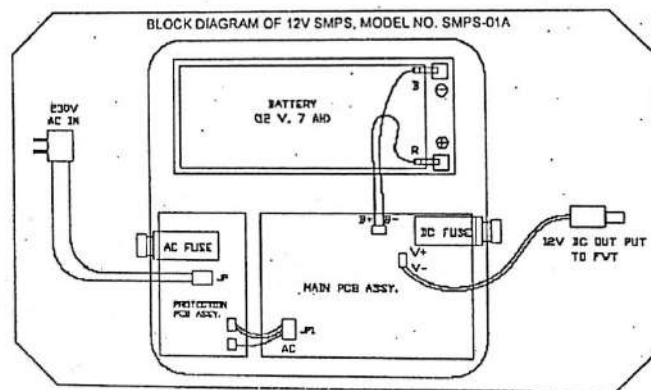
ICOMM TELE LIMITED

T.S.No. : C/7/17/1, DRAKSHARAMA ROAD, YANAM 533 464
TEL : 0884 - 2324960. FAX : 0884 - 2324860

39. In Chapter-1 of the said manual, the overview of 12V SMPS is given as under :

1.1 Overview

12 V, 2.15 A SMPS is designed for using with Integrated Fixed Wireless Telephone (IFWT) like ACP 606 of Hi Sense make. It provides reliable, pure and uninterrupted 12 Volts DC power supply to the IFWT. It also provides charge current for 12 V, 7AH battery.



40. The appellant has classified the goods under 85299090 as parts of IFWTs. It is the case of the appellants that the imported goods in the nature of main PCB, lightening protector, DC/AC cables etc. were used for making SMPS which is integral part of IFWT and therefore the imported goods are part of IFWT. The department has determined the classification to be under 85049090 and has also taken the view that imported goods though may be parts of SMPS are not parts of IFWT and therefore not eligible for the exemption under Notification No.21/2005.

41. The Ld. Counsel has not put forward arguments as to the classification of the goods imported and submitted that the benefit of notification No.21/2005-Cus. is available to all parts, components and accessories of mobile handsets including cellular phones regardless of the classification. The Notification No.21/2005-Cus. dated 1.3.2005 is noticed as under :

“Phones – Parts, components and accessories of mobile handsets including cellular phone – Exemption

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 parts, components and accessories of mobile handsets including cellular phones**, from the whole of the duty of customs leviable thereon under the said First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.

[Notification No.21/2005-Cus., dated 1-3-2005]

42. As per the above notification, the parts, components and accessories of mobile handsets including cellular phones are exempted from the whole of Additional Duty of Customs. No doubt, the IFWT would fall under the category of cellular phones. It is the case of appellant that they would be eligible for Notification No.6/2006 also. Sl.No.31 of said Notification reads as under :

S.No.	Chapter or heading or sub-heading or Tariff item of the First Schedule	Description of excisable goods.	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
...				
31	85 or any other Chapter	Parts, components and accessories of mobile handsets including cellular phones	Nil	3

43. The appellant has furnished Central Excise Registration Certificate dated 6.6.2006. In the Annexure at Sl. No.6 the parts that go into the making of 12V SMPS is given. Annexure to the Registration Certificate reads as under :

ANNEXURE TO REGISTRATION CERTIFICATE NO.2/2006 Dated 06.06.2006

(Revised on .01.2007 as per the request of M/s.ACD Communications Pvt. Ltd., Yanam vide their letter dated 17.01.2007)

List of Parts, Components and Accessories of Cellular phones i.e. Integrated Fixed Wireless Telephones model No.ACP 606, operating on Cellular Technology.

- 1) Handset Assembly consists of Handset, Screw, Screw Stopper
- 2) Other Parts consists of Hook, Speaker, Speaker button, RF Cable with Connector, Antenna, Coiled cable, Screws
- 3) Front Case Assembly consists of Front Case, LCD Module, Keypad PCB, Key pad, Wall Hook
- 4) Back Case Assembly consists of includes back case, UIM Cover, Battery Cover, Battery Spring
- 5) Main PCB Assembly consists of Main PCB, CDMA Module, ands free Mic, Handset Socket
- 6) 12V SMPS consists of Main PCB, Lightning Protection, DC/AC Cable, Fuse/Fuse Holder and Other i.e. Gum paper, Screws
- 7) 12V 7 AH VRLA Battery.

44. A copy of G.R (Generic Requirements) for SMPS has been placed before us. Ld. Counsel has adverted to the description of SMPS given in Section 1 of the G.R. and the same reads as under :

Sl.No.	Description	Compliance / Remarks
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**12V SWITCH MODE POWER SUPPLY (SMPS) FOR CDMA FWTs &
SIMILAR SYSTEMS
SECTION 1**

1.0	Introduction	
1.1	This document contains the generic requirements of a 12V SMPS power supply for lower power CDMA FWTs & similar systems for providing two way communication in rural areas.	Complied
1.2	The fixed wireless terminals may be CDMA Fixed Wireless Terminals or any other technology that may be chosen to be inducted in the Network for Rural Telephony.	Complied
1.3	Whenever the AC mains are available, Float charger (FC) shall charge the battery & delivery power to the load. As soon as the FC fails to deliver the output due to any reason the battery shall take the load, instantly, without any interruption to the load. As soon as the FC is also restored, the load shall be automatically trnasfered to FC. The FC shall also charge he battery to recoup its lost scapacity during discharge. A protection against the discharge of the battery through unit shall be provided.	Complied

45. Section 2 of the G.R. reads as under :

Sl.No.	Description	Compliance / Remarks
SECTION 2		
2.0	General Technical Requirements	
2.1	General The power supply for the above fixed wireless terminals shall be based on Switch Mode Power Supply (SMPS) Techniques using switching frequencies of 20KHz and above.	Complied
2.2	System Configuration: The system shall be composed of the following components:	Complied
a)	FC (Float Charger): 12V/2.15A FC to provide a regulated DC Power Supply to the load and the battery bank, when the AC commercial mains are available. The rating of the FC is sufficient to cater the load (650mA max.) & battery charging requirements of 1 4A at C/5 rate for 7AH battery and C/10 rate for 14AH battery.	Complied
b)	Control & Monitoring: The function of Control & Monitoring component of the system is to protect battery bank from over charge, deep discharge, reverse polarity, short circuit and also provide the necessary supervisory and alarm indications thereby ensuring that the electrical characteristics of the system are met for optimum performance and reliability.	

46. Ld. Counsel has argued that the parts imported by the appellant are the very same which has been described in the G.R. except for the battery mentioned in the description. The goods imported included all the items which have been mentioned therein as part of 12V SMPS. That therefore SMPS being an integral part of

IFWT, the parts imported have to be considered as parts of IFWT. Ld. counsel has also relied on the technical specification dated 13.09.2006 to submit that it has been certified that 12V SMPS for CMDA FWT's cleared by them conforms to the TEC (GR) specifications.

47. There is no doubt that the parts imported have been used to make/assemble an SMPS. The question is whether SMPS is an integral part of IFWT so as to make the parts of SMPS to be part of IFWT. From the specifications of the product placed before us, we understand that SMPS is intended to be used in Float-cum-charge mode as a regulated DC power source. It is simply an electrical power supply that incorporates a switching regulator to convert the electrical energy more efficiently. Though the UPS used for computers also do the same function, UPS has back up facility which is lacking in the case of SMPS. From the specifications, function and use, it cannot be said that SMPS are vital and integral part of IFWT. It is an option.

48. After perusing the description of 12V SMPS as given in G.R as well as the images in service manual noticed above, we are not able to find any ground to hold that IFWT cannot function without 12V SMPS. It is in the nature of energy supplying device which would regulate voltage flow of electricity. IFWT can function even if 12V SMPS is not connected to it. This means IFWT can function if

directly plugged to an energy source. We therefore have no doubt to hold that SMPS is not an integral part of IFWT. The goods imported cannot be considered as part of IFWT.

49. Appellant has also put forward an alternative argument that even if the imported goods do not form part of IFWT, the goods would be an accessory of IFWT and therefore the exemption under notification 21/2005 would apply. The Ld. A.R has contended that this issue was not examined by the authorities below and therefore requires to be remanded. On perusal of the reply to the SCN, the OIO as well as the OIA passed by the Commissioner (Appeals), it is seen that the appellant had taken a contention that, if not part of IFWT, the imported goods are essentially an accessory of IFWT. However, this issue as to whether the goods can be considered as accessory to IFWT has not been examined by the authorities below. As the notification exempts not only parts but also accessories of cellular phones, it was incumbent upon the authorities below to examine the contention put forward by the appellant. In our opinion, the Tribunal also being a fact finding authority can examine the issue so as to avoid an unnecessary remand. Further, it is not a new plea and the appellants have taken this plea even in their reply to SCN. So, we proceed to address this issue.

50. Ld. Counsel has submitted that SMPS adds to the effectiveness of the IFWT. These were procured by BSNL for application in rural areas wherein there is high voltage fluctuations and regular power cuts. That without regulated supply of power to IFWT, it will not function effectively. The Ld. Counsel has relied on the meaning of 'accessory' which has been earlier noticed in para 16 above. It is argued that an accessory need not be essential for actual function of the product but is used to add convenience or effectiveness. That the SMPS increases the effectiveness of IFWT by providing regulated power supply and has to be considered an accessory. To support the argument that SMPS would qualify as an accessory of IFWT, the Ld. counsel has placed reliance on the Hon'ble Supreme Court's judgment in the case of *Mehra Bros. Vs Joint Commercial Officer - 1991* (51) ELT 173 (SC). The relevant part of this judgment is as under :

“6. In *Supreme Motors v. State of Karnataka* case (supra), the Karnataka High Court has taken different view. It held that the car seat covers, at best could make the seat more comfortable, but do not serve as aids to the vehicle as a whole, and therefore, they must fall outside the ambit of Entry 73 of the Second Schedule to the Karnataka Sales Tax Act, 1957 and was not exigible to sales tax at 13 per cent. Undoubtedly this ratio would help the appellant. The learned Judges laid emphasis thus:-

“Every part is useful to the car for its effective operation likewise should be the aid of the accessories in order to fall within the said entry. The accessory to a part which has no convenience or effectiveness to be entire car as such cannot in our opinion fall within Entry 73”.

Having given our anxious consideration, with respect, we are of the considered view that the test laid down by the Karnataka High Court that the accessories as a part must contribute for convenience or effectiveness in the use of the car as a whole is not a correct test. In our view the correct test would be whether the article or articles in question would be an adjunct or an accompaniment or an addition for the convenient use of another part of the vehicle or adds to the beauty, elegance or comfort for the use of the motor vehicle or a supplementary or secondary to the main or primary importance. Whether an article or part is an accessory cannot be decided

with reference to its necessity to its effective use of the vehicle as a whole. General adaptability may be relevant but may not by itself be conclusive. Take for instance Stereo or Air-conditioner designed and manufactured for fitment in a motor car. It would not be absolutely necessary or generally adapted. But when they are fitted to the vehicle, undoubtedly it would add comfort or enjoyment in the use of the vehicle. Another test may be whether a particular article or articles or parts, can be said to be available for sale in an automobile market or shops or places of manufacture; if the dealer says it to be available certainly such an article or part would be manufactured or kept for sale only as an accessory for the use in the motor vehicle. Of course, this may not also be a conclusive test but it is given only by way of illustration. Undoubtedly some of the parts like axle, steering, tyres, battery etc. are absolutely necessary accessories for the effective use of the motor vehicle. If the test that each accessory must add to the convenience or effectiveness of the use of the car as a whole is given acceptance many a part in the motor car by this process would fall outside the ambit of accessories to the motor car. That would not appear to be the intention of the legislature. Similarly in *Free India Cycle Industries and Shadi Cycle Industries* cases (supra), the Allahabad High Court held that cycle covers, Rexine Saddle Cover whether part or accessory of vehicle under Item 34 of the notification dated April 5, 1961 issued by the State of U.P. under Section 3, 3-A of the U.P. Sales Tax Act (15 of 1948) with the same reasoning, as was given by the Karnataka High Court to be not accessories. We express that the Allahabad High Court also has not laid down the test correctly.

7. Thus considered we hold that car seat covers or upholstery are accessories as an addition; an adjunct; an accompaniment for comfortable use of the motor vehicles or for adding elegance to the seat. Admittedly the appellant manufactured car seat covers and upholstery for sale as an automobile part in the regular course of business. Therefore, they are exigible to sales tax at 13 per cent under Entry 3 of Schedule 1st read with Section 3 (3) of the Act. Therefore, we do not find any ground warranting interference. The appeals are accordingly dismissed but in the circumstances without costs.”

51. Another case relied is the case of *State of Punjab & Others Vs Nokia India Pvt. Ltd. - 2015 (315) ELT 162 (SC)* wherein the Hon'ble Apex Court held that mobile/cell phones charger is accessory and not a part of cell phone. The battery charger cannot be held to be a composite part of the cell phone but is an independent product which can be sold separately, without selling the cell phone.

52. The notification exempts parts, components and accessories of mobile handsets including cellular phones from customs duties when imported. In the case of *Nokia India Pvt. Ltd. (supra)* the Hon'ble Apex Court was considering the issue under the Punjab Value Added Tax Act, 2005 where in the assessee, Nokia India Pvt. Ltd., had sold the cell phone along with battery charger as composite package and discharged lesser duty @4% on the charger. The appeal by the state that assessee has to pay tax @12.5% on the battery charger was allowed. In the said case, the Hon'ble Apex Court did not consider as to the interpretation of 'accessory' in terms of Notification No.21/2005-Cus. Again, in the case of *Mehra Bros (supra)* the Hon'ble Court was considering the issue of tax ability of seat covers under the Tamil Nadu General Sales Tax Act, 1959. These decisions are distinguishable on facts. The Tribunal in the case of *Twenty First Century Builders Vs. Commissioner of Cus Delhi, New Delhi 2004 (172) ELT 459 (Tri. Delhi)* examined the issue as to whether casting, terminal, stickers, PCM are eligible for the benefit of Notification No. 21/2002-Cus. The Tribunal denied the benefit holding that as per notification the benefit is eligible for parts, components and accessories of mobile handsets whereas, the goods in question are parts/components of cell phone battery. The view of the Tribunal was upheld by the Hon'ble Apex Court, as reported in *2005 (183) E.L.T. A118 (S.C.)*.

53. At this juncture, we have to say that the arguments which have been put forward are to contend that SMPS is a part of IFWT. Para 10 of the order passed by Commissioner (Appeals) was emphasized by the Ld. Counsel to urge that there is an admission that imported goods are part of SMPS. The commissioner (Appeals) in para 10 observed as under :

“The impugned goods are clearly parts of Switch Mode Power System (SMPS) and not directly the parts of IFWT.”

It has to be remembered that the goods imported are ‘Main PCB, Lightening protector, DC/AC cables, Fuse/Fuse holders etc.’ The goods imported are not SMPS. Merely because SMPS may be used for IFWT it cannot be said at any stretch of imagination that the parts that go into the making of SMPS are accessories of IFWT (cellular phones). In the decision of *Mehra Brothers* (supra) the issue was with regard to a car seat cover. The seat cover is a complete product which enhances the use of the seat. Similarly, in the case of *State of Punjab Vs Nokia India* (supra) the issue decided was whether the mobile charger is an accessory to the mobile phone. In the case on hand, the goods imported are parts of SMPS. The benefit of notification is available only to parts, components, or accessories of cellular phones. The benefit is not applicable to parts of an accessory of a cellular phone. The Main PCB, Lightening protector etc. used in SMPS cannot be considered as accessory of IFWT.

54. We also have to mention that in the appellant's own case the issue that was decided is as to the exemption claimed under the very same notification in respect of batteries (VRLA) imported by them for use in IFWT. Tribunal held that batteries cannot be held as parts, components or accessories. The relevant part of the Tribunal decision reads as under :

“6. He argues that the impugned batteries are designed to fit into the SMPS and therefore they are integral parts of the SMPS. However, SMPS being a part of the IFWT, the batteries should also be treated as a part of the IFWT. He also argues that batteries cannot be considered to be consumables as has been held by the adjudicating Commissioner as they do not get consumed but wear out in course of time as any other part. He argues that alternatively, the impugned batteries should be extended the exemption considering the same as accessories to the IFWT. He also argues that since the impugned batteries have been imported for use with original equipment and not for sale, the appellants are not required to register themselves with the Ministry of Environment and Forest under Rule 5 of the Batteries (Management and Handling) Rules, 2001. The Id. Advocate also cites the following decisions in favour of the arguments advanced by him.

- (a) *Vanasthali Textiles Industries Ltd. v. CCE, Jaipur* - [2007 \(218\) E.L.T. 3](#) (S.C.)
- (b) *Mak Controls v. CCE, Coimbatore* - [2001 \(138\) E.L.T. 1152](#) (Tri.-Chenn.)
- (c) *CCE v. Mak Controls* - [2005 \(183\) E.L.T. A73](#) (S.C.)
- (d) *Union Carbide (I) Ltd. v. State of Andhra Pradesh* - [1995 \(76\) E.L.T. 489](#) (S.C.)
- (e) *Teracom Pvt. Ltd. v. CC, Goa* - [2008 \(222\) E.L.T. 58](#) (Tri.-Mumbai)
- (f) *Jayshree Industries v. CCE* - [1993 \(63\) E.L.T. 492](#) (Tri.)
- (g) *Eveready Industries India Ltd. v. CCE, Lucknow* - [2005 \(184\) E.L.T. 90](#).

7. We have heard Shri C. Dhanasekaran, Id. SDR, appearing for the department. He cites the decision of the Tribunal in the case of *Twenty First Century Builders v. CC, New Delhi* - [2004 \(172\) E.L.T. 459](#) (Tri.-Del.) and argues that parts of batteries were not considered as parts of cellular phones in that case. He also states that this decision of the

Tribunal has been upheld by the Hon'ble Supreme Court vide *Twenty First Century Builders v. CC, New Delhi* - [2005 \(183\) E.L.T. A118](#) (S.C.) and the civil appeal against the Tribunal's order has been dismissed. He argues that from this decision it can be concluded that the batteries are not parts of telephones, otherwise the part of the batteries would have been allowed exemption on the basis of the logic that part of a part is a part of the whole. He also states that in the case of *Teracom* (supra), batteries were listed among various other goods and that the issue as to whether the batteries were part of the telephones was not in question nor the Tribunal has decided this issue therein. It was merely decided in the *Teracom* case that CDMA WLL phones are cellular phones which was the issue for consideration in that case. He further states that in the following cases, it has been held that battery cells are articles by themselves and are not parts of any machines :-

- (i) *M/s. Webel Telecommunication Industries v. CC, Calcutta* - [1995 \(76\) E.L.T. 163](#)
- (ii) *M/s. Electronic and Engineering Co. v. CC, Bombay* - [1997 \(92\) E.L.T. 382](#)
- (iii) *CC, Madras v. Kodi Medical Electronics Pvt. Ltd.* - [1998 \(98\) E.L.T. 535](#)
- (iv) *M/s. Titan Watches Ltd. v. CC, Coimbatore* - [1999 \(108\) E.L.T. 643.](#)"

... ..

10. It is an admitted position that the impugned VRLA batteries cannot be used inside the telephones because of its size as also the fact that it is not a dry cell battery but a lead-acid battery containing electrolyte. It is also admitted that the VRLA batteries are actually placed in the Switch Mode Power Supply (SMPS) which supplies power to the telephone. During the argument of the case, the Id. Advocate has indicated that the IFW telephones are typically used in rural areas and since electrical power from the transmission lines are often interrupted, the SMPS is useful since automatically it switches from the main power supply to VRLA battery used in the SMPS, thereby ensuring continuous functioning of the telephone. It appears that functioning of the SMPS is more akin to the UPS which are nowadays used along with the computers, which provide continuous power at times of power cuts. The question to be decided in this case is whether VRLA batteries which supply power to IFW telephones at the time of power cuts can be considered as parts of IFW telephones as argued by the Id. Advocate."

55. Though the appellant filed appeal before the Hon'ble Apex Court against this order, the appeals were dismissed. Ld. Counsel has been at pains to distinguish the view taken by the Tribunal in their own case. The decision of the Hon'ble Apex Court in the case of *State of Punjab Vs Nokia India* (supra) has been relied to counter the view taken by the Tribunal earlier with respect to the batteries. As discussed above, the issue in the case was in regard to a complete product in the nature of mobile phone charger. In the present case, the goods imported are parts of SMPS. We have already held that SMPS is not a part of IFWT. The goods imported cannot be considered as accessory as these parts are not used to increase the effectiveness or convenience of IFWT. We categorically hold that the goods imported are neither parts nor accessories of IFWT and therefore cannot avail the benefit of notification. We make it clear that we have not addressed the issue of classification.

56. In the result, the impugned order does not require any interference. The assessee's appeal is dismissed.

(Pronounced in open court on 22.03.2023)

Sd/-
(SULEKHA BEEVI C.S.)
Member (Judicial)

Sd/-
(VASA SESHAGIRI RAO)
Member (Technical)