

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 55572 of 2023 [DB]

[Arising out of Order-in-Original No. DLI/ CUS/ PREV/ PC/ SKR/ 05/ 2022 dated 15.03.2023 passed by the Principal Commissioner of Customs (Preventive), New Delhi]

M/s. XOR Technologies LLP

A-40, Mayapuri Industrial Area,
Phase-I, New Delhi - 110064

...Appellant

VERSUS

**Principal Commissioner of Customs
(Preventive), New Delhi**

New Customs House,
Near IGI Airport, New Delhi-110037

...Respondent

APPEARANCE:

Shri Naveen Mullick and Shri Parth Mullick, Advocates for the Appellant
Shri Rakesh Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 26.06.2024
DATE OF DECISION: **30.09.2024**

FINAL ORDER No. 58745/2024

DR. RACHNA GUPTA

M/s. XOR Technologies, the appellant, is a manufacturer of Set-top Box, DVR/NVR, Reception Apparatus of Television, CCTV Camera, Lithium-ion Batteries/Power Banks, Populated PCB Mobile Charger/adaptors and sub-parts for use in manufacture of items mentioned above. The Importer-appellant is registered with Export Promotion Circle, Delhi, Customs Preventive Commissionerate (Delhi) and are availing the benefit of S. No. 512 of the Notification No. 50/2017-Customs dated 30.06.2017, as amended. Accordingly, the Importer-appellant has furnished the prescribed bond as

required under Customs (Import of goods at concessional rate of duty, Rules 2017 (IGCR Rules 2017) as prescribed vide Notification No. 68/2017-Cus dated 30.06.2017, as amended.

2. Department observed that the Importer has imported various goods namely Housing Plastic, USB Cables, Lithium-ion Cell etc. after availing the benefit of S. No. 512 of the Notification No. 50/2017-Cus dated 30.06.2017, as amended, during the period of the year 2017-2019. The Importer-appellant has used all the imported items as mentioned above in manufacturing of Power Bank and thus violated the terms of the exemption Notification No. 50/2017-Cus dated 30.06.2017, entry at Sr.no. 512, as amended. Department observed that as per the aforesaid Notification, the exemption benefit is available for the parts, components and accessories except 'populated printed circuit boards' for use in manufacture of lithium-ion batteries other than batteries of mobile handsets including cellular phones falling under tariff item 8507 60 00.

3. It is alleged that the Importer-appellant has manufactured Power banks, which is a portable device comprising of rechargeable cells in a special circuit to control power having USB port/s etc. As per details submitted by the importer-appellant, the amount of total duty forgone on the parts imported by them, after availing the benefit of sr.No. 512 of the notification No. 50/2017-Cus dated 30.06.2017, as amended, is Rs. 8,12,95,799/-.

4. Department formed an opinion that Lithium-ion Battery and Power Bank are different. The Government of India, vide Notification No. 02/2019-Customs dated 29.01.2019 effective from

30.01.2019 vide serial no 17B allowed a concessional rate of 5% of Basic Custom Duty for Lithium-ion cell for use in the manufacture of Power Bank of Lithium-ion. Thus, it is very explicitly that the intent of the Government of India to extend the benefit of concessional rate of duty to Lithium-ion Cell for use in manufacture of Power Bank was only on the issue of the aforesaid notification and not earlier. It is also clear from the above said notification that the Government has distinguished Lithium-Ion batteries and Lithium-Ion Power bank by extending the benefit for manufacturing the said products under two different entries/ serial numbers of the said notification. Therefore, it appears that both items namely Power Bank & Lithium Ion Batteries are different. As per department there were no need of the inclusion of two entries viz 17A & 17B in the Notification No. 57/2017-Customs dated 30.06.2017 also, as amended.

5. Finally it is observed that Ashish Mutneja, Partner of the Importer-appellant admitted, in his statement recorded under Section 108 of the Customs Act, 1962, that the imported goods namely Housing Plastic, USB Cables, Lithium-ion Cell etc. have been used in manufacturing of Power Bank. The benefit of this notification is available on such imported parts, components and accessories which are used in the manufacture of Lithium-ion Battery. Therefore it is alleged that the Importer has violated the terms of notification as mentioned in sr.no. 512 of the notification No. 50/2017-Cus dated 30.06.2017, as amended read with the IGCR Rules, 2017 as prescribed under notification No. 68/2017-Cus (N.T.) dated 30.06.2017, as amended. It is also alleged that the

importer has knowingly indulged himself in the act of omission and commission as discussed above, and therefore rendered himself liable for penal action and Section 114A of the Customs Act, 1962. Hence vide Show Cause Notice No. 02/2022-23 dated 30.06.2022 following was proposed:

(a) The benefit of the concessional rate of duty under sr.no. 512 of the notification No. 50/2017-Cus dated 30.06.2017, as amended, on the goods imported by the Importer and used in manufacturing of Power Bank should be denied to them.

(b) Differential Customs duty of Rs. 8,12,95,799/- (Rs. Eight Crore Twelve Lakh Ninty Five Thousand Seven Hundred Ninty Nine only) forgone on the goods imported at the concessional rate of duty by availing benefit under sr.no. 512 of the Notification No. 50/2017-Cus. Dated 30.06.2017, as amended, should be demanded/recovered from them under rule 8 of IGCR Rules, 2017 as defined under Notification No. 68/2017-Cus (N.T.) dated 30.06.2017, under Section 28(4) of the Customs Act, 1962 read with Section 143 (3) of the Customs Act, 1962 and in terms of clauses of Bond executed by them.

(c) Interest as applicable, on the duty demanded above, should be charged and recovered from them under rule 8 of IGCR Rules, 2017 as defined under Notification No. 68/2017-Cus (N.T.) dated 30.06.2017, read with Section 28AA of the Customs Act, 1962, and condition of Bonds executed by them.

(d) Penalty should be imposed upon them under Section 114A of the Customs Act 1962.

(e) The Bonds and Bank guarantees/sureties furnished by them at the time of import should be invoked and enforced for recovery of Customs duty, interest, fine and penalty.

6. This proposal has been confirmed vide Order-in-Original No. 05/2022 dated 15.03.2023. Being aggrieved the present appeal has been filed.

7. We have heard Shri Naveen Mullick and Shri Parth Mullick, learned Advocates for the appellant and Shri Rakesh Kumar, learned Authorized Representative for the department.

8. Learned counsel for the appellant has mentioned that appellants had been engaged in the manufacture of Lithium-ion batteries to be used for further manufacturing of one of their products called Lithium Ion Battery Pack/Power Banks.

9. The appellant imported parts, components and accessories at Concessional Rate, except for printed Circuit Board, for using them in manufacture of Lithium Ion Battery other than batteries of Mobile handsets including mobile phones falling under Tariff item 8507 6000 due to exemption as granted at serial no 512 of Notification no 50/2017-Cus dated 30.06.2017. The said exemption is available subject to compliance of the condition number 9 mentioned therein. The extract of the said condition is reproduced as under:

"IF THE IMPORTER FOLLOWS THE PROCEDURE SET OUT IN THE CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY) RULES-2017." It has been impressed upon that these IGCR Rules, 2017, specifically define the term "Manufacture" and also explain the procedure to be followed while converting imported goods into

Lithium Ion Battery. It is impressed that Battery is the combination two more cells. The appellants has joined the imported lithium cell along with imported nickel strips,wires,etc.to form a battery of certain number of imported Lithium cells and has covered the same into imported plastic protective casing.Ld. Counsel submitted that this procedure of forming battery from the imported components preciselyfalls under said definition of manufacture given in IGCR Rules, 2017. It is also mentioned that the product so manufactured is known to trade as Lithium Ion Battery and is saleable too. The appellants have used the said battery by connecting the same through the wire coming out from said Lithium Ion Battery with populated printed circuit board assembly i.e PCBA, however, being caged in the same protective casing where the Lithium Ion Battery o had already been placed. It is impressed upon that the product still is Lithium Ion Battery Pack/ power bank.Hence the allegation of department that appellants have not manufacture Lithium Ion Battery is incorrect.

10. Ld. Counsel further submitted that for availing the exemption/ benefit of concessional rate of customs duty under under Notification No. 50/2017 dated 30.06.2017, the importer-appellant has followed and complied with following:

a) All requisite Provisions including the Provisions of the Customs Act, 1962 and that of CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY) RULES-2017 (herein after referred as IGCR Rules) as required under condition no. 9 mentioned in the said notification.

b) Appellants have duly reported compliances to the satisfaction of the Jurisdictional Divisional Assistant Commissioner of Central Excise, Janak Puri, Delhi and also to the satisfaction of The Assistant/Deputy Commissioner of Customs of the (Port of Import) under whose jurisdiction the parts & components/goods, in question were imported in the manner laid down therein.

c) The reporting was made to the changed authority too when the jurisdiction of the Divisional/Assistant Commissioner of Central Excise, Janak Puri, Delhi switched over to the Jurisdiction of EPC, Delhi Branch of the Assistant Commissioner of Customs (Preventive), New Customs House, Delhi w.e.f. Year 2018 when New Customs House took over the charge of appellant's factory and

d) In terms of Rule 4 of IGCR Rules, 2017 the appellant has been regularly filing the 'INFORMATION' with The Jurisdictional Assistant Commissioner of Central Excise/The Assistant Commissioner of Customs (Preventive). The appellant declared in such 'INFORMATION' the details of imported raw materials and about using those raw materials in manufacture of Lithium Ion Battery.

e) Appellant has also declared about the Continuity Bond, as used to be executed with surety with the said INFORMATION and about the acceptance thereof in terms of Rule 5 of IGCR Rules, 2017 to the satisfaction of the said concerned officers.

f) The appellant has maintained the Records as required under Rule 6 (3) of IGCR Rules, 2017 after the imported goods got cleared from the Port of Import on Bill of Entry assessed under Section 46 of the Customs Act, 1962 and on compliance of Section 17 of the

Customs Act, 1962 by the Officers of Customs, and got received by the appellant in their Factory at Mayapuri, Delhi.

g) Appellant has regularly been filing the Quarterly Returns, in the prescribed format.

11. The recommendation letter from Assistant Commissioner of Customs (Preventive), Delhi is also brought to notice which reads as under:

(a) The exact nature of Goods qualifying for Exemption may please be ascertained at the time of Import.

(b) The EPC Delhi Branch SHALL MONITOR THE END USE OF THE GOODS IMPORTED by the party under aforesaid Rules. "KINDLY SEND THE COPY OF THE BILL OF ENTRY."

The said jurisdictional Assistant Commissioner of Customs, Delhi was monitoring the manufacturing process carried out by the appellant. Ld. Counsel impressed upon that the said jurisdictional officer never communicated nor ever objected that the appellant had not made use of imported Parts/accessories/components in manufacture of 'LITHIUM ION BATTERY' (LITHIUM ION BATTERY PACK). Rather the Assistant Commissioner of Customs (Port of Import), on receipt of Communication/Recommendation from the Assistant Commissioner of Customs (Preventive) and on being satisfied about the potential use of respective Part, Components, Accessories under import in the manufacture of LITHIUM ION BATTERIES (LITHIUM ION BATTERY PACK), as required under Notification No. 50/2017 CUS dated 30.06.2017, had been ordering 'out of charge' under Section 46 of the Customs Act, 1962. The

Bills of Entry filed from time to time by the appellant have regularly been assessed by the concerned officers without raising any such objection as has been raised in the impugned Show Cause Notice (SCN).

12. It is further mentioned that after receipt & utilization of the Stocks in their Factory and after observing the complete compliance on part of appellant, the Assistant Commissioner of Customs, used to cancel the Continuity Bonds filed by the appellant from time-to-time. Such Continuity Bonds were ordered to be cancelled under Section 143(2) of the Customs Act, 1962 by the jurisdictional Assistant Commissioner. Such orders can be passed only after being satisfied about the Stocks of the Parts, Components and Accessories which have been imported at Concessional Rate of Duty against respective Bill of Entry that those have successfully been used in manufacture of Lithium Ion Batteries that too in due compliance of the requisite conditions of IGCR Rules. Such orders based on observations that the conditions of notification no. No. 50/2017 dated 30.06.2017, entry no. 512, have duly been complied with, have attained finality as no appeal has ever been filed by the Department.

13. It is further submitted that the impugned order under challenge does not dispute towards manufacture of Lithium Ion Batteries (Lithium Ion Battery Pack) having taken Place during carrying out of production of so-called Power Banks. Hence On manufacture of such specified type of Lithium Ion Battery, the benefit of the said Notification is available to the appellant. Subsequent utilization of such Lithium Ion Battery by the importer-

appellant into Lithium Ion Battery Pack/ power bank cannot be the ground for denying benefit of exemption to such parts, components and accessories imported at Concessional Rate of Duty.

14. Learned counsel also emphasized that this composite product used as power bank has already been clarified as 'Accumulator' of heading no. 85.07 of CTA, 1975 by the Government of India, Ministry of Finance, Department of Revenue, Tax Research Unit through Letter F. No. 354/29/2017-TRU dated 26.04.2017 when read with HSN Notes, it is nothing but storage battery or secondary battery. Judgment of the Hon'ble CESTAT in the case of Commissioner of Central Excise and GST, Delhi-I Vs. SB Industries, 2019 (366) ELT 185 (T) as relied upon by the department, though has denied that power banks are not accumulators but has clearly held about the same as consisting of secondary battery. Otherwise also said decision vide which the clarification of TRU dated 26.04.2017 was set aside is sub-judice before the Hon'ble Apex Court. The department also has not recalled the said circular. The appellants have availed the benefit of the impugned notification under the bonafide belief about said TRU clarification. Above all the impugned SCN has been issued after the notification no.02/2019 dated 29.01.2019 when in entry no. 17 B thereof "powerbank" was mentioned for the first time. Hence during the period in dispute there was nothing called as Powerbank. To HSN also it was only accumulators as good as battery were known.

15. Finally it is submitted that the show cause notice has wrongly invoked the extended period of limitation. The department has information since the time of import, as appellant was complying

IGCR Rules properly, as mentioned above. The concerned officers were supervising the procedure and were certifying the compliance of the conditions of the impugned notification by cancelling the Continuity bond, as already mentioned above. Hence suppression is wrongly alleged. SCN therefore is barred by limitation. The demand confirmed vide the impugned order is liable to be set aside on this ground as well. With these submissions the Order under challenge is prayed to be set aside and appeal is prayed to be allowed.

16. While rebutting these submissions learned Departmental Representative has submitted on behalf of the department that the demand of Rs 8.13 Cr. has been raised and affirmed along with the interest and penalty of Rs.8.13 Cr. by revoking bonds as were submitted at the time of import of the impugned goods (parts and components) which actually are the parts and components for manufacture of power bank. The appellants has availed the benefit of concessional customs duty by wrongly mentioning that imported parts and components have been used in manufacture of Lithium Ion Battery. Hence the benefit of availing nil rate of duty on those parts and components by invoking Notification No. 50/17 dated 30.6.2017 is nothing but an act of suppressing the important facts before the customs authority Thus the extended period has rightly been invoked while issuing the show cause notice.

17. With respect to the merits about the confirmed demand, it is submitted that the exemption Notification No. 50/17 categorically states that the benefit is available only for such parts and components as shall be used for manufacturing Lithium Ion Batteries. Since the appellant is admittedly manufacturing power

bank, a product different from Lithium Ion Batteries, the benefit of exemption/ concessional duty of customs has wrongly been availed by the appellants . The demand of duty forgone is therefore rightly confirmed by the adjudicating authority below. The appellant actually was not eligible for exemption from basic customs duty under the Notification No. 50/2017 at Entry No. 512 as amended. The order under challenge is held to be in conformity with the provisions of Customs Act, 1962 read with Rule 8 of Customs (Import of Goods at Concessional Rate of duty) Rule, 2017 (IGCR 2017), and by invoking the bond submitted with the department as required under the Notification No. 68/2017.

18. Learned Departmental Representative has further mentioned that Lithium Ion Battery and power bank are two distinct products as is clear from S.No. 376 AA and 376 AAA of the Notification No. 1/2017-IT(Rate) dated 28.06.2017. Also the department issued concessional rate of duty for power bank vide customs Notification No.02/2019 dated 29.01.2019 wherein duty benefits for power bank and battery packs are defined separately. The appellant therefore has not only violated the clearcut provisions of exemption Notification No. 50/17 to have wrongly availed the exemption benefits but have also contravened the provisions of IGCR Rules, 2017 by wrongly submitting before Jurisdictional Assistant Commissioner/Deputy Commissioner that they have been manufacturing Lithium Ion Battery Pack and by never intimating that they have been manufacturing power banks. Hence the submission of the appellant-importer that as per TRU letter dated 26.04.2017 both the items merit classification under CTH 8507 and

both are one and the same is without any application of mind. It is impressed upon that since the notification is specific about parts and components of lithium Ion Battery the TRU letter is misinterpreted by the appellant. It is mentioned that this Tribunal in the case of **S B Industries (Supra)** has already set aside the said clarification of TRU. The violation of terms and conditions of the bond/undertaking is submitted as the sufficient ground to hold appellant liable to pay the duty forgone as in the undertaking it has wrongly been mentioned that the imported parts and components have been used for manufacture of Lithium Ion Battery. Learned Departmental Representative has relied upon the decision of this Tribunal, Mumbai Bench, in the case of **Patel Engineering Ltd vs Commissioner of Customs (Import), Mumbai reported as 2013 (295) ELT 243**. With these submissions it is mentioned that the demand of duty fore gone has rightly been confirmed. Impressing upon no infirmity in the order under challenge, the appeal is prayed to be dismissed.

19. Having heard the rival contentions, perusing the entire records of the present appeal, we observe that the moot question to be adjudicated in the present case is as follows:

Whether the appellant is eligible for duty exemption benefit given under Entry No. 512 of Notification No. 50/2017 dated 30.06.2017 while importing parts/components for the manufacture of Lithium Ion Battery or the benefit of said notification has rightly been denied to the appellant as the appellant has actually manufactured power bank as different from Lithium Ion Battery from the imported parts and components.

20. It is an undisputed fact that the appellant is engaged in manufacture products Likemobile handsets, CCTV cameras etc. Controversy herein has emerged as appellant has availed the benefit of exemption from Customs Duty in terms of Notification no. 50/2017 dated 30.06.2017, entry at sr.no. 512, while importing following parts and components:

Housing Plastic, USB Cables, Lithium-ion Cell, Nickel Strips, Plastic Casing/ Housing.

21. To adjudicate the above question and the appellant's eligibility for said exemption, we foremost perused the said notification. It reads as follows:

Appellant claimed exemption from payment of duty (basic customs duty @10%) in terms of Notification No. 50/2017-Cus dated 30.06.2017 (Sr. No. 512). Sr. No. 512 of Notification No. 50/2017-Cus. dated 30.06.2017 allows duty free import, amongst others, of parts required for manufacture of Lithium-ion batteries, subject to fulfillment of certain conditions as specified in Condition No. 9 of the said notification. Relevant portion thereof (entry at Sr. No. 512) is reproduced below for ready reference:

<i>Sr. No.</i>	<i>Chapter of Heading or sub-heading of tariff item</i>	<i>Description of goods</i>	<i>Standard rate of duty</i>	<i>IGST Tax</i>	<i>Condition No.</i>
512	85 or any other chapter	(a) Parts, components and accessories except populated printed circuit boards for use in	Nil	-	9

		<i>manufacture of lithium-ion batteries other than batteries of mobile handsets including cellular phones falling under tariff item 8507 6000; (b) Sub-parts for use in manufacture of items mentioned at (a) above.</i>			
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22. The perusal makes it clear that exemption to the imported parts, components and accessories under the Notification No. 50/2017-CUS dated 30.06.2017 issued under Section 25 of the Customs Act, 1962 is based on post-importation conditions:-

a) Use and utilization of such goods.

b) There has to be 'manufacture' of specified type of Lithium Ion Battery by use of such components as specified, in accordance with IGCR Rules, 2017 issued under Section 156 of the Customs Act, 1962 read with Notification No 68/2017-CUS (NT) dated 30.06.2017

23. We observe that there is no denial about use and utilisation of all the imported parts and components by the appellant for manufacturing its product that too in compliance of the condition

no. 9 of the notification, the benefit where under, appellant has claimed. The controversy is about what is being manufactured; the Lithium Ion Battery as claimed by appellants or the powerbank as alleged by the department. Said condition no. 9 reads as follows:

"If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR Rules, 2017)

These Rules specifically define term 'Manufacture' and term 'Information'.

24. The term 'Manufacture', as appearing under the referred notification, thus, has necessarily and mandatorily to be interpreted and given effect, as laid down under the provision of IGCR Rules, 2017. The same is extracted here under:

Rule 3- Definition- in these rules unless the context otherwise requires- Rule 3(e) - MANUFACTURE means the processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term manufacturer shall be construed accordingly

Rule 3(c) INFORMATION - means the information provided by the manufacturer who intends to avail the benefit of an exemption notification

Rule 2(1) - These rules shall apply to an importer, who intends to avail the benefit of an exemption notification issued under subsection (1) of Section 25 of the Customs Act 1962 (52 of 1962) and where the benefit of such exemption is dependent upon the use of imported goods covered by that notification for the manufacture of any commodity or provision of output service

Rule 2(2)- These rules shall apply only in respect of such exemption notifications which provide for the observance of these rules"

25. The benefit of exemption notification should not be extended to circumvent any good and should also not be elastically stretched to cover such goods which may not come under its periphery. The decision of Hon'ble Apex Court in the case of **Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company reported as 2018 (361) ELT 577 (SC)** is relied upon wherein it has been held that exemption notification should be interpreted strictly. The burden of proving applicability would be on the assessee to show that his case comes within the parameter of exemption clause or exemption notification and in case of any ambiguity the benefit shall go to the state though the benefit of ambiguity in taxing statute, the benefit thereof shall go to the assessee. In a prior decision in the case of **Tata Iron & Steel Co. Ltd. Vs. State of Jharkhand reported as (2005) 4 SCC 272** the two judge bench of Hon'ble Supreme Court laid down that eligibility clause in relation to exemption notification must be given a strict meaning. While following **Novopan India Ltd. Vs. Collector of C. Ex. and Customs, Hyderabad reported as 1994 (73) ELT 769 (SC)** it was held "the principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such case it is for the SSC to show that he comes within the purview of the exemption." This view has recently been again affirmed by the Honourable Apex Court itself in the case of **L.R. Brothers Indo Flora Ltd. Vs. Commissioner of Central Excise reported as 2020 (373) ELT 721 (SC)** while summarizing it is mentioned that the appellant has wrongly

obtained the benefit of exemption by basic customs duty while wrongly claiming the benefit under Notification No. 50/2017.

26. Thus it stands clear that the benefit of exemption to components, parts and accessories to be imported at concessional rate of duty since is based on observance and compliance of IGCR Rules, 2017, therefore the term manufacture appearing in Notification No. 50/2017 dated 30.06.2017 in its entry at S.No. 512 has to be interpreted by taking into consideration the provision of Rule 3 (e) of IGCR Rules, 2017, as quoted above.

Further we observe that the parts and components imported by the appellant, admittedly, are:

- (i) Lithium Ion Cells
- (ii) Cables
- (iii) Nickle/stainless steel strips
- (iv) Heat resistant tapes, silicone, hardware, stickers, form tapes, glues, screws, insulation tapes etc.
- (v) Shell/housing/protective casing

27. The appellants have been submitting to the Concerned officers as 'Information" the block diagram of Lithium Ion Battery Pack. Admittedly no objection earlier was ever raised about the process of manufacture shown in those diagrams nor about the claim that Lithium Ion Battery is being manufactured by the appellants. Thus it stands admitted procedure that imported Lithium Ion Cells are connected with other such cells by use of imported nickel strips/stainless strips (imported parts) by means of electrical

welding both manually as well as mechanically. Imported cables are then been connected the imported heat resistance tapes and insulation stickers are used on the imported Lithium Cells to be wrapped around terminal of those cells as a protection measure to avoid any short circuit/over heating. The form stickers are also used around the combination of those imported cells to act as a shock observers only and to keep the cells tightly packed in the imported protective case. At this stage it is Lithium Ion Battery which comes into existence.

28. As per the above quoted definition of Manufacture of IGCR Rules, 2017, to avail the benefit of exemption under the notification no. 50/2017, the imported parts and components being the raw material or inputs have to be **processed in any manner that results in emergence of a new product having a distinct name, character and use.** The above procedure is sufficient for us to hold that the imported parts and components have been used by the appellant in such manner that Lithium Ion Battery emerges as a new product having a distinct name and use. The manufacture has to be read in terms of Rule 3 (e) of IGCR Rules, 2017 as already quoted above.

29. The term cell and battery are used inter changeably, however both are quite different. Cell is a single unit device which convert chemical energy into electrical energy whereas battery is a group of such cells. Depending upon the type of electro lights used in the cell. The cell is either wet or dry. Whereas battery is either a primary battery or a secondary battery i.e. a chargeable or nonchargeable battery. Cell is a single unit and battery is a combination of those single units. This physical/scientific

explanation about the meaning of cell and battery is sufficient for us to hold that the appellant has imported cells as single units with various other components and combined the single unit cells with the help of the other imported components to be converted into a battery. The above discussion is sufficient for us to hold that the term manufacture of Rule 3(e) IGCR, 2017 gets satisfied at the time of emergence of battery as distinct from its component i.e. individual lithium cell and others. From the case law as quoted above about interpretation of a notification, it is clear that definition of 'Manufacture' as given in IGCR Rules, 2017, the scope thereof cannot be enlarged from the stage of emergence of new product to the stage of manufacture of final product which is Power Bank in the present case.

30. Coming back to Entry No. 512, we observe that the exemption is available when the imported parts and components are used in manufacture of lithium batteries. The notification is nowhere requiring the Lithium Ion Battery to be manufactured as the final product of the importer. This observation and definition of manufacture under IGCR Rules, 2017 a joint reading, is sufficient for us to hold that the Entry No. 512, the term manufacture therein, has not to be understood/interpreted in terms of the definition of manufacture given under Excise Act, 1944. Otherwise also the period in question is subsequent to coming into effect of Goods and Service Tax Act, 2017 repealing most of the provisions of Excise Act, 1944. Above all the language of notification has to be strictly interpreted as has also been impressed upon by the

department. In the case of **Dilip Kumar & Co.** (supra) the Hon'ble Supreme Court though has held that ambiguity in exemption notification the benefit thereof cannot be claimed by the assessee and has to be interpreted in favour of Revenue. However, it has simultaneously held that when words in a statute are clear, plain and unambiguous and only one meaning can be inferred the courts are bound to give effect to the said meaning irrespective of the consequences in applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. Especially in fiscal statutes and penal statutes. It has also been held that regard must be had to the clear meaning of words and matter should be governed wholly by the language of notification, equity or intendment having no place in interpretation of tax statute. It is only in case of two possible interpretation of the exemption statute that the benefit of interpretation is given to the assessee in case it is an ambiguous taxing statute, however, benefit has to be given to the Revenue in case there is ambiguity in the exemption clause of the statute. The word 'plain meaning' has also been elaborated by the Hon'ble Apex Court as follows:

- i) *19. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanal Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.*
- ii) *20. in applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the*

language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the Court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose (Assistant Commissioner, GadagSub-

Division, Gadag v. MathapathiBasavanneewa, 1995 (6) SCC 355). Not only that, if the plain construction leads to anomaly and absurdity, the Court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation.

iii) *21. in construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution (265. Taxes not to be imposed save by authority of law - No tax shall be levied or collected except by authority of law.) prohibits the State from extracting tax from the citizens without authority of law, It is axiomatic that taxation statute has to be interpreted strictly because State cannot at their whims and fancies burden the citizens without authority of law. In other words, when competent Legislature. mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the Legislature.*

iv) *22. At the outset, we must clarify the position of 'plain meaning rule or clear and unambiguous rule' with respect of tax law. The plain meaning rule suggests that when the language in the statute is plain and unambiguous, the Court has to read and understand the plain language as such, and there is no scope for any Interpretation. This salutary maxim flows from the phrase "cum inverbis nullaambiguitas est, non debet admittivoluntatis quaestio". Following such maxim, the Courts sometimes have made strict interpretation subordinate to the plain meaning rule (Mangalore Chemicals case (Infra para 37).), though strict interpretation is used in the precise sense. To say that strict interpretation involves plain reading of the statute and to say that one has to utilize strict interpretation in the event of ambiguity is self-contradictory.*

Similarly the word strict interpretation has also been described:

- v) *Strict interpretation. (16c) 1. An interpretation according to the narrowest, most literal meaning of the words without regard for context and other permissible meanings. 2. An interpretation according to what the interpreter narrowly believes to have been the specific intentions or understandings of the text's authors or ratifiers, and no more. Also termed (in senses 1 & 2) strict construction, literal interpretation; literal construction; restricted interpretation; interpretatio stricta; interpretatio restricta; interpretatio verbalis. 3. The philosophy underlying strict interpretation of statutes. Also termed as close interpretation; interpretation restrictive.*
- vi) *See strict constructionism under constructionism. Cg. Large interpretation; liberal interpretation (2).*

31. As already observed above the exemption entry has simply talked about manufacture out of imported parts and components that to in compliance of IGCR Rules, 2017 which defined term manufacture also and the entry is silent for such manufacture to be of the final product of the importer of parts and components. We hold that there is no ambiguity in the notification. Department has wrongly interpreted the manufacture to mean as manufacture of end product. It is held that since the appellant has used the imported parts and components in manufacture of Lithium Ion Battery which irrespective the battery has been captively used to manufacture power bank and irrespective that power bank has a slight different connotation from Lithium Ion Battery despite having the same function as that of Lithium Ion Battery, we hold appellantentitle for the benefit of exemption of Entry No. 512 of Notification 50/2017 dated 30.06.2017.

32. Department's yet another submission is that the Central Government simultaneously issued another Notification No.02/2019-Cus dated 29.01.2019 (sr. no. 17B) for the Lithium-ion cells w.e.f. 30.01.2019, the relevant portion of which reads as under:

S.No.	Chapter or Heading or sub- Heading or tariff item	Description of goods	Rate	Condition No.

17A	8507 60 00	Lithium ion cell for use in the manufacture of battery pack of cellular mobile phone.	5%	1
17B	8507 60 00	Lithium ion cell for use in the manufacture of power bank of Lithium ion	5%	1

33. From the perusal of the above, it is evident that w.e.f. 29.01.2019, lithium-ion cells were taken out of the scope of Serial No. 512 of Notification No. 50/2017-Cus and placed in a separate entry 17B of Notification No. 02/2019 where those were made chargeable to duty at the rate of 5%. Conversely, Lithium-ion cells were squarely covered within the ambit of Sr. No. 512 prior to 29.01.2019 and were eligible for exemption. Hence, the amendment made vide Notification Nos. 02/2019-Cus and 03/2019-Cus both dated 29.01.2019 clearly manifest that before the amendment, subject goods were exempted vide Notification No. 50/2017-Cus. Post the above amendment, the subject goods have been withdrawn from exemption notification and have been placed under the duty rate of 5%.

34. After the discussion above, it is important to also check as to how HSN code considered the products in question at the relevant time i.e. during the year 2017 to 2019. It can judicially be noticed that the period in question from 2017 to 2019 was the period of

speediest technological innovations with respect to gadgets in dispute. Admittedly the relevant entry in HSN code is 8507 which reads as follows:

85.07 Electric accumulators, including separators therefore, whether or not rectangular (including square).

8507.10 – Lead-acid, of a kind used for starting piston engines

8507.20 – Other lead-acid accumulators

8507.30 – Nickel-cadmium

8507.40 – Nickel-iron

8507.50 – Nickel-metal hydride

8507.60 – Lithium-ion

8507.80 – Other accumulators

8507.90 - Parts

35. The notes to this chapter clarifies that electric accumulators are nothing but the storage batteries or secondary batteries which are characterized by the fact that the electro chemical action is reversible so that the accumulator may be recharged which are used just like battery to store the electricity and to supply it when required. A direct current is passed through the accumulator producing certain chemical changes (charging): when the terminals of the accumulator are subsequently connected to an external circuit these chemical changes reverse and produce a direct current in the external circuit (discharging). This cycle of operations, charging and discharging, can be repeated for the life of the accumulator. Accumulators consist essentially of a container holding the electrolyte in which are immersed two electrodes fitted with terminals for connection to an external circuit. In many cases

the container may be subdivided, each subdivision (cell) being an accumulator in itself; these cells are usually connected together in series to produce a higher voltage. A number of cells so connected is called a battery.

36. The chapter note further clarifies accumulators contained one or more cells and the circuitry to interconnect the cells amongst themselves, often referred to as "battery packs". **Apparently and admittedly there was nothing in HSN code nor even under Tariff Act during the period in question, which can specifically be known as power banks.** It was in the Notification No. 02/2019 dated 29.01.2019 that the word "power bank of Lithium Ion" was for the first time found mentioned.

37. The HSN further clarifies about the character and potential usage of Secondary Battery or Storage Battery, which for the purpose of Heading 85.07 should be covered under 'Electric Accumulators'. It even provides the manner by which functioning of Storage Battery or Secondary Battery has to take place. In brief, it states relating to include the product, which can be recharged on receiving of direct current and further such product should store Electrical Energy and supply the same, when required. The product covered herein should have Terminals, which can be connected to such External Circuit, wherein chemical changes reverse and produce a direct current in the External Circuit (Discharging). Thus the BATTERY OF CHAPTER HEADING 85.07 AS PER HSN is one:

a) "Where the cells are connected in series is called a Battery"

b) The Accumulators containing one or more cells and the circuitry to interconnect cells amongst themselves often referred as 'Battery Packs' are covered under Electric Accumulator of CTH 85.07.

38. Since 'Electric Accumulator', as per HSN, means only to cover Storage Batteries and Secondary Batteries, and there being no dispute Battery/Battery Pack in the present case fall under Chapter Heading refers to the same product, such products are covered under Electric Accumulator. Even HSN recognizes Battery or Battery Pack as Secondary Battery or Storage Battery.

39. Chapter Note 3 of Chapter 85 of the CTH, the crux, is that so long as the product manufactured from components imported at Concessional Rate of Duty have the character of storage and supply of Electrical Energy and can be recharged, will remain as Secondary Battery or Storage Battery of Chapter Heading 85.07. It is also an undisputed fact that the appellant has sold its product as Lithium Ion Battery Pack only, the product was never sold as power bank.

40. From the entire above discussion it is clear that the power bank performs the same function of storing and transferring electrical energy, it being a Lithium Ion Battery that is a combination of Lithium Ion Cells, however, connected to a printed circuit board which is meant for converting the 3.7 volt stored energy to 5 volt energy as is required by the gadget to be charged through the said power bank working on Lithium Ion Battery. It also stands established that it is only the printed circuit board(PCBA) which distinguishes a generic Lithium Ion Battery from power bank. Appellant is admittedly paying Customs Duty on the import of said PCBA.

41. The captive use of the manufactured 'Lithium Ion Battery' by the appellants to be used as 'Power Bank' by connecting said battery to a PCBA, to our opinion, is irrelevant for denying the benefit of notification 50/2017 to the appellant for the reason as below;

- i) The notification simply talks about the emergence of a new product having new name and different identity in the trade. It does not talk about emerged new product should be the final product manufactured
- ii) The emerged Lithium Ion Battery, the wire coming out from it has been connected to a PCBA and is kept in the same housing the lithium Ion Battery was first placed.
- iii) The appellants have paid the customs Duty while importing said PCBA.

42. It stands clear that any product called Power Bank was not known to trade nor to HSN during the relevant time. As brought to notice, **there was a TRU circular dated 26.04.2017 wherein it was clarified that the power banks merits classification as an accumulator under Heading 8507 of the Customs Tariff Act and the chapter heading 8507 covers Lithium Ion Accumulator.**

TRU clarifications have a binding character vis-a-vis department. We draw our support from the decision of Constitution Bench of Hon'ble Apex Court in the case of **Collector of Central Excise, Vadodara Vs. Dhiren Chemical Industries reported as 2002 (139) ELT 3 (SC)** and the subsequent decision of Hon'ble Apex Court in the case of **Collector of Central Excise, Meerut Vs.**

Maruti Form Pvt Ltd reported as 2004 (164) ELT 394 (SC). it becomes clear that the appellant had bona fide relied upon the said circular which was prevalent during the period in question and apparently it has not been withdrawn till date.

43. Department's another submission is that in the year 2017 itself, a Notification No. 01/2017 dated 28.06.2017-IT vide entries 376 AA and entries 376AAA had distinguished lithium Ion Batteries (376AA) from Lithium Ion Accumulators including Power bank(376AAA), based upon which the department alleged that the powerbank was known as a different product than lithium battery since the Year 2017 itself. But we find that entry 376AA came into existence only on 20.08.2018 and it talks only about Lithium Ion Batteries. The entry no. 376AAA though introduced the word Power Bank but we observe that this entry came into existence on 29.01.2020 i.e. after the period in dispute.

43. In the light of entire above discussion we hold that from the raw material imported by the appellant at concessional/ exempted rate of customs Duty in terms of Notification No. 50/2017 dated 30.06.2017 has been utilised by them to manufacture Lithium Ion Battery (Accumulator) which has been captively used by them to manufacture 'Power Bank'. Hence it is held that appellants have rightly claimed the exemption.

44. Now coming to the decision of this Tribunal in **S B Industries (supra)**, it is observed that in the instant case battery used in 'Power Bank' is manufactured from Lithium ion Cells imported by the appellant. The finding of this Hon'ble Tribunal in SB Industries (supra) also provides details of process carried out for bringing into

existence of Lithium ion Battery from Lithium ion Cells. Appellant herein also carries out the same process for manufacture of Lithium ion Battery from Lithium ion Cells (imported under Rules, 2017). Since Lithium ion Battery has been manufactured by use of imported lithium ion Cells, utilization of the same in the 'Power Bank', cannot be the basis for denying the benefit of exemption granted to the imported Parts and components so used under Notification No. 50/2017-Cus. dated 30.06.2017.

45. Though the Final Order No. 50039/2019 dated 14.01.2019 of this Hon'ble Tribunal in the case of S B Industries (supra) has been challenged by the department before the Hon'ble Supreme Court on the issue of classification of Power Bank under Chapter Heading No. 85044030 or 85.07, however no stay has been granted of the operation of the aforesaid order dated 14.01.2019. Matter is pending adjudication before the Hon'ble Apex Court. Copy of the order dated 20.09.2019 passed in the aforesaid appeal filed by the department before the Hon'ble Sureme Court being Civil Appeal Diary No. 25607 of 2019 is at page 252 of aforesaid Misc. Application. In this appeal the department has taken a contrary view to what has been taken in the present case.

46. Coming to the issue of invocation of extended period of limitation:

We observe that the IGCR Rules,as are mandatorily required to be observed for availing the benefit of notification no.50/2017, came into force on 1st July 2017 by virtue of Notification No. 68/2017 dated 30.06.2017. Rule 5 thereof prescribes the procedure to be followed by the importer who intends to avail the benefit of

exemption notification requiring such importer to provide the following "information" to the concerned officer:

(a) in duplicate, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the estimated quantity and value of the goods to be imported, particulars of the exemption notification applicable on such import and the port of import in respect of a particular consignment for a period not exceeding one year, and

(b) in one set, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

(2) The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(3) The Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall forward one copy of information received from the importer to the Deputy Commissioner of Customs, or as the case may be, Assistant Commissioner of Customs at the Custom Station of Importation.

(4) On receipt of the copy of the information under clause (b) of sub-rule (1), the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.

47. As per this Rule 5 IGCR Rules, 2017 utilization of such components through step by step process has to be under taken under the watchful Eyes of the jurisdictional Assistant Commissioner of Customs. With obvious approval by the jurisdictional Assistant Commissioner of Customs on each step/act undertaken by the importer/ manufacturer starting from providing of 'Information' under Rule 4, of said Rules and intimation about receipt in the factory of components imported at Concessional Rate of Duty. Quarterly Returns on utilization of components that such importer/ manufacture makes compliance of IGCR Rules, 2017 have also been admittedly filed by the appellants. It is observed that filing the records for each step, as referred above, before the jurisdictional Assistant Commissioner of Customs is not a mere paper formality under IGCR Rules 2017, but requires intervention and control of such Authority on appellants' working. Execution of Continuity Bond by the importer/ manufacturer to the satisfaction of the jurisdictional Assistant Commissioner of Customs followed by cancellation of such Bond by such Assistant Commissioner on being satisfied of the importer/ manufacturer's compliance cast involvement and a very heavy responsibility on the jurisdictional Assistant Commissioner of Customs for proper check on the importer's/manufacturer's ongoing activities with the components. In fact, the jurisdictional Assistant Commissioner of Customs, being

the proper officer under IGCR Rules 2017, has to regularly discharge his official Powers for the units working under IGCR Rules 2017. The said rules, by itself, have been so framed to involve the jurisdictional Assistant Commissioner of Customs for watching of actual working of importer in its factory.

48. All the documents as placed on record by the appellant prove the step by step compliance of the above mentioned provisions of IGCR Rules, 2017. It is also an undisputed fact that the 'Continuity Bonds' submitted by the appellant had been cancelled after monitoring the end use of the components imported at the concessional rate of duty in terms of impugned Notification No. 50/2017.

49. Thus, it stands clear that to our opinion, there is no scope to invoke Section 28(4) of the Customs Act, 1962 and to impose penalty under section 114A of the Act.

50. From the above discussion on respect of submissions raised by both the parties, as have been specifically deal with, we hold that the appellant since has duly complied with the condition no. 9 of the notification, the appellant is liable for the benefit of exemption of Notification No. 50/2017 dated 30.06.2017. Though in terms of Notification No. 02/2019 dated 29.01.2019 distinguished Lithium ion Battery or Power Bank for the first time and based thereupon the demand of duty not paid by the appellant on the imported raw material/parts and components for the period January 2019 to June 2019 could have been demanded. The impugned show cause notice is held being barred by limitation. The said demand is also liable to be set aside. In view thereof, the

order under challenge is hereby set aside. Consequent thereto, appeal stands allowed.

(Order pronounced in the open court on **30.09.2024**)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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