IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76261 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/KS/419/2024 dated 02.07.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Eastern Lights Industries Private Limited : Appellant
H. No. 9, Kabarstan Path, Daranda, Sixmile,
Guwahati, Kamrup Metropolitan, Assam – 781 037

VERSUS

Commissioner of Customs (Port) : Respondent
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Tarun Chatterjee, Advocate
Shri Raju Mondal, Advocate
For the Appellant

Shri Faiz Ahmed, Authorized Representative
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75214 / 2025

DATE OF HEARING: 23.01.2025

DATE OF DECISION: 30.01.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Eastern Lights Industries Pvt. Ltd, Assam, (hereinafter referred to as "the appellant"), filed an EDI Bill of Entry No.8902963 Dated 31-05-2022 against invoice No. 1015 dated 09.02.2022 raised by M/s. CDMINE Ltd., Canada for USD 252800 (CIF) in respect of imported goods declared as 'Data Processing Server' with all standard parts and accessories (second hand) classifying those goods

under the Customs Tariff Item No. CTH84714190. The appellant claimed that import of the said goods is exempted under Notification No.24/2005-Customs, dated 01.03.2005, under entry No. 8. The said consignment was assessed on First Check basis by examination order dated 31.05.2022. 100% of the imported goods were examined by shed officers, in the presence of SIIB officers and Chartered Engineer. Upon examination, the officers were of the opinion that the goods imported were mis-declared and undervalued. Accordingly, an investigation was initiated against the appellant.

2. On completion of the investigation, the appellant was called upon to show cause as to why: -

a. The declared assessable value of the entire consignment of Rs. 1,98,70,080/- should not be rejected under provisions of Rule 12 of CVR, 2007 read with Section 14 of Customs Act, 1962 and should not be re-determined at Rs. 2,23,33,876 / under Rule 9 of the CVR, 2007 read with Section 14 of Customs Act, 1962;

b. Undeclared goods i.e. Output Power Supply, Switching Power Supply, AC-DC converter & Delta Energy system should not be classified under CTH 85044029;

c. Undeclared goods i.e. Switches should not be classified under CTH 85176990;

d. Imported goods having re-determined value of Rs. 2,23,33,876/- actually found during the examination should not be confiscated under Section 111(d), 111(l) and 111 (m) of the Customs Act, 1962;

e. Penalty should not be imposed on the appellant under Section 112(a)(i) of the Customs Act, 1962 for act of omission or commission which renders the imported goods liable for confiscation under Section 111(d), 111(1) 111(m);

f. Penalty should not be imposed on the appellant under Section 114AA of the Customs Act, 1962 for act of omission or commission which renders the imported, goods liable for confiscation under Section 111(d), 111(1) 111 (m).

2.1. After due process, the Ld. Joint Commissioner of Customs (Port), Appraising Group 5E, Kolkata Customs passed the Order in Original dated 26.12.2023 wherein he has passed the following order: -

"I. I reject the declared assessable value of the entire consignment of Rs.1,98,70,080/-(Rupees one crore ninety eight lakh seventy thousand eighty only) imported under the Bill of Entry No. 8902963 dt. 31.05.2022 under provisions of Rule 12 of CVR, 2007 read with Section 14 of Customs Act, 1962 and redetermine the same at Rs.2,23,33,876/- (Rupees two crores twenty three lakh thirty three thousand eight hundred seventy six only) under Rule 9 of the CVR, 2007 read with Section 14 of Customs Act, 1962, for reasons discussed in the Order supra.

II. I classify the undeclared goods i.e. Output Power Supply, Switching Power Supply, AC-DC converter & Delta Energy system imported under Bill of Entry No. 8902963 dt. 31.05.2022 by M/s. Eastern Lights Industries Pvt. Ltd. (IEC-AAGCE2782G) under CTH 8504 4029 for reasons discussed in the Order supra;

III. I classify the undeclared goods i.e. Switches imported under Bill of Entry No. 8902963 dt. 31.05.2022 imported under Bill of Entry No. 8902963 dt. 31.05.2022 by M/s. Eastern Lights

Industries Pvt. Ltd. (IEC-AAGCE2782G) under CTH 85176990for reasons discussed in the Order supra;

IV. I order for absolute confiscation of imported goods under Bill of Entry No. 8902963 dt. 31.05.2022 having re-determined value of Rs.2,23,33,876/- (Rupees two crores twenty three lakh thirty three thousand eight hundred seventy six only) actually found during the examination under Section 111(d), 111(1) & 111(m) for reasons discussed in the Order supra;

V. I impose a penalty of Rs.20,00,000/- (Rupees Twenty Lakhs only) under Section 112(a)(i) of the Customs Act, 1962 on M/s. Eastern Lights Industries Pvt. Ltd. (IEC-AAGCE2782G)for its act of omission or commission which had rendered the imported goods liable for confiscation under Section 111(d), 111(1) & 111(m) for reasons as discussed in the Order supra;

VI. I impose a penalty of Rs.30,00,000/- (Rupees Thirty Lakhs only) under Section 114AA of the Customs Act, 1962 on M/s. Eastern Lights Industries Pvt. Ltd. (IEC-AAGCE2782G)for its act of omission or commission which had rendered the imported goods liable for confiscation under Section 111(d), 111(1) & 111(m) for reasons as discussed in the Order supra;

VII. I impose a penalty of Rs.2,00,000/- (Rupees Two Lakhs only) under Section 112(a)(i) of the Customs Act, 1962 on the Customs Broker i.e. M/s India Transport & Travel Pvt. Ltd. for its act of omission or commission which had rendered the imported goods liable for confiscation under Section 111(d), 111(1) & 111(m) for reasons as discussed in the Order supra;"

2.2. On appeal, the Ld. Commissioner (Appeals) passed the impugned Order in Appeal bearing No. KOL/CUS(PORT)/KS/419/2024 dated 02.07.2024, rejecting the appeal of the appellant and upholding the Order in Original dated 26.12.2023. Being aggrieved by the impugned order, the appellant has filed this appeal.

3. The appellant submits that they have imported second hand "Data processing Server" with all standard Accessories namely Output Power Supply, Switching Power Supply, AC-DC converter & Delta Energy system and Switches and filed EDI Bill of Entry No.8902963 dated 31.05.2022. It is submitted that the authorities below have erred in holding that the import of 'server' with parts and accessories are restricted as per Para 2.31 of the Foreign Trade Policy (FTP) as notified by the DGFT Notification No.05/2015-20 dated 07.05.2019. The appellant submits that 'server' is entirely different from a "Automatic Data Processing Machine"; the function of 'server' is to receive and share data to other computer on its network; the server is an apparatus for the transmission or reception of information , image or data; that the server may work in conjunction with the automatic data processing machine but server itself never process any data automatically like desktop, personal computer or laptop; that the servers are computers, which are meant for specific application in a network; they are entirely different from the "Automatic Data Processing Machine" including personal computers and laptop computers, which are actually stand-alone equipment. Moreover, it is their submission that in commercial parlance "Automatic Data Processing Servers" are described as "Servers" only and it is also pertinent to mention that servers don't have the keyboard and monitors, therefore the restriction in the Exim Policy as per Para 2.31 of the Foreign Trade Policy (FTP) as notified by the DGFT Notification No.05/2015-20, dated 07.05.2019 is applicable only to computers including personal computer and laptop computer and not to 'Servers'.

3.1. The appellant further submits that the 'Servers' cannot function without Output Power Supply, Switching Power Supply, AC-DC converter & Delta Energy system and Switches. Accordingly, the appellant has declared all such goods as 'Data Processing Servers' under Chapter '84714190'. Furthermore, it is submitted that the appellant has not imported such goods separately as independent goods but the same came as part and parcel of the 'Server'. Thus, it is the submission of the appellant that the imported goods i.e., 'server' with parts and accessories falling under Chapter 84714190 are not restricted or prohibited goods under Section 111(d) in the Customs Act, 1962 read with Para 2.31 of the Foreign Trade Policy (FTP) as notified by the DGFT Notification No.05/2015-20, dated 07.05.2019; hence, confiscation of such imported goods is bad in law.

3.2. In support of their claim that 'Servers' are classifiable under the CTH 8417, the appellant relied upon the following decisions:

(i) COMMR. OF CUS., BANGALORE Versus MICROSOFT CORPN. INDIA PVT. LTD. [2008 (224) E.L.T. 322 (Tri. - Bang.)]

(ii) In COMMR. OF CUS. & C. EX., HYDERABAD-II VS. DELL INDIA PVT. LTD. [2008 (226) E.L.T. 367 (Tri. - Bang.)].

3.3. Regarding the penalty imposed under Section 114AA of the Customs Act, 1962, the appellant submits that they have not made any misdeclaration in the Bill of Entry; that it is an admitted fact on record that the appellant has filed the Bill of Entry with correct information and the respondent has accepted

such classification, which is evident from the fact recorded at paragraph 1.11. read with paragraph 22.1 of the Order in Original dated 26.12.2023. In this regard, the appellant submits that classification dispute cannot be considered as violation of Section 114AA of the Act and hence, the penalty imposed under Section 114AA of the Act is not sustainable.

3.4. The appellant relied upon the decision in the case of *COMMR. OF CUS., SEA, CHENNAI-II VS. SRI KRISHNA SOUNDS AND LIGHTINGS [2019 (370) E.L.T. 594 (Tri. - Chennai)],* wherein it has been held that penalty under section 114AA is imposable mainly for cases of fraudulent exports and the said penalty cannot be invoked in respect of cases of mis-declaration of classification.

3.5. Regarding the penalty imposed under Section 112(a) of the Customs Act, the appellant submits that penalty under Section 112(a) relates to violations in regard to situation where goods are liable for confiscation under Section 111; in the instant case, the imported goods are not 'restricted goods'; these goods are duty free goods and can be imported freely; in the instant case, confiscation of the goods is made on erroneous premises of law, by mis-interpreting the DGFT Notification No.05/2015-20, dated 07.05.2019 , the authority below has mixed up the 'server' with Desktops Computer and Personal Computers / Laptop, considered the same as ' "Automatic Data Processing Machine" and erroneously confiscated the server. Thus, the appellant submits that since the confiscation itself is bad in law and thus penalty imposed under Section 112(a) of the Act is not sustainable.

3.6. Accordingly, the appellant prayed for setting aside the redemption fine and penalties imposed in the impugned order.

4. The Ld. Authorized Representative of the Revenue submits that the goods imported are second hand "Automatic Data Processing Machines" mis-declared as 'servers'. He contends that on examination, it was found that many parts and accessories were not declared; as the second hand goods imported are 'restricted items' as per DGFT policy, the said goods have been confiscated and the appellant was given an option to redeem the goods on payment of redemption. Since mis declaration has been established, he contends that penalty has been rightly imposed. Accordingly, he supported the impugned order.

5. Heard both sides and perused the appeal documents.

6. We observe that the appellant has imported second hand "Data processing Server" with all standard Accessories namely Output Power Supply, Switching Power Supply, AC-DC converter & Delta Energy system and Switches. The lower authorities have considered the goods imported by the appellant as "Automatic Data Processing Machines" with parts and accessories, which are restricted items as per **Para 2.31 of the Foreign Trade Policy (FTP) as notified by the DGFT Notification No.05/2015-20, dated 07.05.2019**.

6.1. We observe that the issues to be decides in the present appeal are as under:

(i) Whether Confiscation of the imported 'server' falling under CTH 84714190 is warranted or not, on the ground that the appellant has imported restricted goods in violation of DGFT Notification No.05/2015-2020 dated 07.05.2019 read with Electronics And Information Technology Goods (Requirement for Compulsory Registration) order 2012.

(ii) Whether Imposition of penalty of Rs.20,00,000/- under Section 112(a) (i) of the Customs Act, 1962 for violation of Section 111(d), 111(l) and 111(m) of the Act is justified?

(iii) Whether Imposition of penalty of Rs.30,00,000/- under Section 114AA of the Customs Act, 1962 for violation of Section 111(d), 111(l) and 111(m) of the Act is justified?

7. We observe that the said consignment was assessed on First Check basis by examination order dated 31.05.2022, 100% of the imported goods were examined. The goods were examined 100% basis by shed officers in presence of SIIB officers and Chartered Engineer. Upon examination, the examining officers have accepted that the goods imported are 'servers'. We find that the findings of the examination has been recorded in paragraph 1.11., which when read with paragraph 22.1 of the Order in Original dated 26.12.2023, establishes that the goods imported by the appellant are 'Servers'. We observe that 'Servers' are entirely different from "Automatic Data Processing Machines". The function of a server is to receive and share data to other computer on its

network. A server is an apparatus for the transmission or reception of information, image or data. The server may work in conjunction with the automatic data processing machine but a server itself never processes any data automatically like desktop, personal computer or laptop. We find that the servers imported by the appellant are meant for specific application in a network, are entirely different from the "Automatic Data Processing Machine" including personal computers and laptop computers, which are actually stand-alone equipment. We observe that 'servers' imported by the appellant don't have the keyboard and monitors. Thus, we observe that the restrictions in the Exim Policy as per Para 2.31 of the Foreign Trade Policy (FTP) as notified by the DGFT Notification No.05/2015-20, dated 07.05.2019 are applicable only to computers including personal computer and laptop computer and not to 'servers' imported by the appellant.

7.1. 'Servers' are classifiable under the CTH 8417. This view is supported by the decision in the case of ***COMMR. OF CUS., BANGALORE Versus MICROSOFT CORPN. INDIA PVT. LTD. [2008 (224) E.L.T. 322 (Tri. - Bang.)]***, wherein at paragraph 3, it has been held as under:

> *"We find that according to the Computer Dictionary and as quoted under grounds of appeal the "Server on a Local Area Network a computer running administrative software that controls access to the network and its resources, such as printers and disk drives, and provides resources to computers functioning as workstations on the network." No doubt, servers are also computers, but servers are computers, which are meant for specific application in a network. They are entirely different from the personal computers and laptop computers, which are actually stand-alone equipments. Moreover, in commercial parlance "servers" are described as "servers" only and it is*

> *also pertinent to note that they don't have the keyboard and monitors. The Commissioner has rightly distinguished between personal computers/laptop computers and also the server. In our view, the Commissioner is correct in holding that the restriction in the Exim Policy is applicable only to computers including personal computer and laptop computer and not to server. We note that normally the servers will be the larger machines having very high memory. The processing speed also will be very high and there are various types of servers for various applications. There is no reason to exclude them from the scope of 'Capital Goods'. So, they are not stand-alone computer. In any case, the Commissioner (Appeals) has upheld the confiscation on some other ground and he has also imposed redemption fine and penalty which is the final penalty imposed or only reduced. We do not find any reason as regards the valuation adopted by the Commissioner. Revenue has also no grievance on this point. In these circumstances, no purpose would be served in restoring the original order. Hence, we dismiss the Revenue's appeal".*

7.2. The same view has been held by the Tribunal, Bangalore in the case of ***COMMR. OF CUS. & C. EX., HYDERABAD-II VS. DELL INDIA PVT. LTD. [2008 (226) E.L.T. 367 (Tri. - Bang.)],*** wherein the Tribunal has held as under:

> *"On a very careful consideration of the issue, we find that the server is also a computer which is used in conjunction with other computers in managing a network. In other words, as pointed out in the Board's Circular, Server is the Father Computer. The server performs various functions. It actually receives the inputs from the other computers in the networks and it also sends its output to the other computers. The server per se cannot be considered as networking equipment. The server along with the other computers in conjunction with the networking equipment would form a computer network. We are not impressed with the Revenue's argument that Note 5(E) would refer to a server. The server itself is an Automatic Data Processing Machine (ADP). Further, the case-laws relied on by the Respondents are very relevant. In these case laws, it has been clearly held that servers are classifiable under CTH No. 8471 only. We*

> *reproduce ethe relevant Paragraph 2 from the Board's Circular No. 497/63/99-CX, dated 30-11-1999 cited by the learned Advocate;*
>
> *2. The matter has been examined by the Board. It is observed that, Computers and computer network are covered under Heading 84.71 of Central Excise Tariff. A computer network can be defined as two or more computers and devices like printers connected together. A network is built in order to share the devices like printer or scanner among many computers and to share the information available on different computers network enables simultaneous work on different computers which is coordinated by the father-computer called "server". It also facilitates communication between two computers by different means.*

7.3. Thus, by relying on the decisions cited above, we hold that the appellant has rightly classified the goods imported by them under the Customs Tariff Item No.84714190 and rightly claimed exemption under Notification No.24/2005-Customs, dated 01.03.2005, under entry No.8.

7.4. Regarding the allegation of mis-declaration, we find that the lower authorities have alleged that, on examination, it was found that many parts and accessories were not declared. We have perused the items listed as 'mis declared' in the impugned order. On perusal, we observe that the goods not declared are items such as Output Power Supply, Switching Power Supply, AC-DC converter & Delta Energy system and Switches. We find these items are parts and accessories of the 'servers' imported by the appellant without which the 'servers' cannot function. We also find that the value of the same has already been included in the value of the 'servers' and no separate value has been paid for the parts and accessories. Thus, we do not agree with the findings of the lower authorities that the appellant has mis-

declared these items. Thus, we hold that the allegation of mis declaration in the impugned order is not sustained. Accordingly, we hold that the confiscation of the goods on account of mis-declaration is not warranted.

7.5. Regarding undervaluation, we observe that the appellant has declared assessable value of the entire consignment as Rs.1,98,70,080/-. The said value declared by the appellant was rejected by the lower authorities under the provisions of Rule 12 of CVR, 2007 read with Section 14 of Customs Act, 1962 and the assessable value has been re-determined at Rs. 2,23,33,876 / under Rule 9 of the CVR, 2007 read with Section 14 of Customs Act, 1962. We observe that the value addition is mainly on account of inclusion of value of undeclared goods such as Output Power Supply, Switching Power Supply, AC-DC converter & Delta Energy system. However, we find that these undeclared items are parts and accessories of 'Server' and their value has already been included in the value of 'servers' and hence no additional value need to be added for the undeclared items. Accordingly, we hold that the assessable value declared by the appellant is correct as there is no under valuation established. Hence, we reject the value enhancement by the lower authorities.

8. Regarding the penalty imposed under Section 114AA of the Customs Act, 1962, we find that the appellant has filed the Bill of Entry with correct information and the allegation of mis declaration is not sustained. The classification of the goods as 'servers' under the CTH 8471 4190 is found to be in order and the respondent has accepted such classification, which is evident from the fact recorded at

paragraph 1.11. read with paragraph 22.1 of the Order in Original dated 26.12.2023. For the sake of ready reference, the relevant paragraphs of the Order-in-Original dated 26.12.2023 are reproduced below: -

> *"1.11. Upon examination, the old and used/2nd hand DPS, which is basically Automatic Data Processing machine (ADP machine) capable of storing the processing programme or programmes and appears to be appropriately classifiable under CTH 84714190 which attract BCD NIL & IGST @ 18% at sl. no. 371A of Schedule III of IGST Notification 01/2017……*
>
> *……..*
>
> *"22. With regards to the classification of the impugned goods, I observe that:*
>
> *22.1. Items found as 1093 pcs of old and used "Data Processing Servers" are correctly classified under CTH 8471 4190 in terms of Rule 3A of General Interpretive Rules;"*

8.1. We also observe that classification dispute cannot be considered as violation Section 114AA of the Act and accordingly, we hold that penalty imposed under section 114AA of the Act on the appellant is not sustainable. In support of this view, we rely upon the decision of the Tribunal, Chennai in the case of *COMMR. OF CUS., SEA, CHENNAI-II VS. SRI KRISHNA SOUNDS AND LIGHTINGS [2019 (370) E.L.T. 594 (Tri. - Chennai)],* wherein the Tribunal held that: -

> *"It is seen stated that as per the Taxation Laws (Amendment) Bill, 2005, introduced in Lok Sabha on 12-5- 2005, the Standing Committee has examined the necessity for introducing a new Section 114AA. The said Section was proposed to be introduced consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The said Section envisages enhanced penalty of five times of the value of the goods. The Commissioner (Appeals) has analyzed the object*

and the purpose of this Section and has held that in view of the rationale behind the introduction of Section 114AA of the Customs Act and the fact that penalty has already been imposed under Section 112(a), the appellate authority has found that the penalty under Section 114AAis excessive and requires to be set aside. Thus, the penalty under Section 114AA is not set aside merely for the reason that penalty under Section 112(a) is imposed. After considering the ingredients of Section 114AA and the rationale behind the introduction of Section 114AA, the Commissioner (Appeals) has set aside the penalty under Section 114AA.

7. On appreciating the evidence as well as the facts presented and after hearing the submissions made by both sides, I am of the view that the Commissioner (Appeals) has rightly set aside the penalty under Section 114AA since the present case involves importation of goods and is not a situation of paper transaction. I do not find any merit in the appeal filed by the department and the same is dismissed. The cross-objection filed by respondent also stands dismissed."

8.2. Regarding the penalty imposed under Section 112(a) of the Customs Act, we find that penalty under Section 112(a) relates to violations in regard to situation where goods are liable for confiscation under Section 111. In the instant case, the imported goods are not 'restricted goods'. These goods are duty free goods and can be imported freely. In the instant case, confiscation of the goods is made on erroneous premises of law, by mis-interpreting the DGFT Notification No.05/2015-20, dated 07.05.2019, as the authority below has mixed up the 'server' with Desktops Computer and Personal Computers / Laptop and considered the same as "Automatic Data Processing Machine" and erroneously confiscated the server. Thus, we hold that the confiscation in the impugned order is not sustainable. For the same reason, the penalty imposed on the appellant under Section 112(a) of the Act is not sustainable.

9. In view of the above discussions, we pass the following order:

(i) The confiscation of the imported 'server' falling under CTH 84714190 is not warranted, as the goods imported by the appellant are not 'restricted goods' and there is no violation of DGFT Notification No.05/2015-2020 dated 07.05.2019 read with the Electronics And Information Technology Goods (Requirement for Compulsory Registration) Order, 2012.

(ii) Imposition of penalty of Rs.20,00,000/- under Section 112(a)(i) of the Customs Act, 1962 is set aside.

(iii) Imposition of penalty of Rs.30,00,000/- under Section 114AA of the Customs Act, 1962 is set aside.

10. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the appellant, with consequential relief, if any, as per law.

(Order pronounced in the open court on **30.01.2025**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd