सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250771MN0000033130

क	फ़ाइल संख्या FILE NO.	S/49-53/CUS/AHD/24-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	JMN-CUSTM-000-APP-074-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	10.07.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-In-Original No. 03/AC/LRM/GPPL/REF/GPPL/24-25, dated 23.04.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	10.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Subros Limited LGF, World Trade Centre, Barakhamba Lane, New Delhi – 110 001

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	**मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं**	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

Appeal has been filed by M/s. Subros Limited, LGF, World Trade Centre, Barakhamba Lane, New Delhi – 110 001, (hereinafter referred to as 'the Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-In-Original No. 03/AC/LRM/GPPL/REF/GPPL/24-25, dated 23.04.2024 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Customs, Pipavav (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had filed refund application for claim of refund of Customs Duty amounting to Rs. 29,93,088/- against the 74 (Seventy Four) Bills of Entry on 15.02.2024 (received on 23.02.2024). The Appellant had imported the impugned goods with description Resistor Blower vide various Bills of Entry classifying the same under CTH 85334090 of the Customs Tariff Act, 1975 attracting Nil BCD. The department did not agree with the classification done by the Appellant under CTH 85334090 and sought to classify the same under CTH 84159000 attracting BCD @ 10%. Due to urgent requirement of the impugned goods, the Appellant classified the same under CTH 84159000 as proposed by the department and paid the duty under protest,

2.1 The Appellant had submitted the refund claims with the following documents in support of their claim:-

i. Refund claim application in duplicate;
ii. Copy of relevant Bills of Entry;
iii. Copy of duty payment challan;
iv. Statement showing details of duty paid under protest;
v. Letter of under protest;
vi. CA Certificate in original;
vii. Tribunal Order in favour of Subros;
viii. Refund Order received from (Noida);
ix. Copy of OIA No. JMN-CUSTM-000-APP-138 to 189-23-24 dated 21.12.2023;
x. Bank details & copy of cancelled Cheque;

2.2 The adjudicating authority vide the impugned order has held that the Appellant was required to file appeal against each Bill of Entry, however, in the instant case, they had not preferred any appeal against the impugned Bills of Entry within the prescribed time limit. It has been further held that the refund claim has not been filed within period of limitation of one year, therefore, the Appellant is not eligible for refund. Accordingly, the adjudicating authority vide the impugned order rejected the refund of Rs. 29,93,088/- of the Appellant under the provisions of Section 27 of the Customs Act, 1962.

3. Being aggrieved with the impugned order passed by the Adjudicating Authority, the appellant have filed present appeals. The appellant have, *inter-alia*,

submitted detailed submissions on following points in support of their contentions:

- The issue in dispute of classification of the Resistor Blowers under CTI 8533 40 90 under the Customs Tariff stands settled in the Appellant's own case reported at CC vs. M/s. Subros Ltd., 2018 (363) E.L.T. 446 (Tri.-Del.). In the said case, the Hon'ble CESTAT, New Delhi had held that the Resistor Blowers had been correctly classified by the Appellant under CTI 8533 40 90 under the Customs Tariff in view of Section Note 2(a) to Section XVI of the Customs Tariff Act. It may be noted that no further appeal has been filed by the Department against this order and therefore, it has attained finality;
- Reliance is also placed on the decision in the Appellant's own case reported classify the goods under at M/s. Subros Ltd. vs. CC, New Delhi, 2018 (363) E.L.T. 849 (Tri.-Del.),wherein the issue before the Hon'ble CESTAT was regarding classification of Thermistors. The Department had objected to the classification of the goods under CTI 8533 40 90 and instead proceeded to CTI 8415 90 00 on the ground that the said goods were identifiable part of automotive air-conditioner system. The Hon'ble CESTAT, New Delhi vide Final Order No. 50021/2018 dated 03.01.2018 held that the Thermistors were correctly classifiable under CTI 8533 40 30 under Customs Tariff instead of CTI 8415 90 00 as parts of automotive air-conditioning systems, as proposed by the Department;
- The decision of the higher appellate authorities is binding and should be followed unreservedly by the subordinate authorities. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of Union of India vs. Kamalakshi Finance Corporation Ltd., 1991 (55) E.L.T. 433 (S.C.);
- Relying on the case of Kamalakshi Finance Corporation Ltd. (supra), several High Courts and Tribunals have held that the principle of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. Reliance in this regard is placed on the following decisions:
  - i. *Khandwala Enterprise Pvt. Ltd. vs. Union of India, 2020 (371) E.L.T. 50 (Del.); and;*
  - ii. *HimgiriBuildcon& Industries Limited &Anr. vs. Union of India through the Secretary and Ors., 2021 (2) TMI 391- BOMBAY HIGH COURT*
- Reliance is also placed on the decision of the Hon'ble CESTAT in the matter of Pals Micro Systems Ltd. vs. C. EX., Mangalore, 2007 (212) E.L.T. 373 (Tri. - Bang.)[affirmed in 2009 (234) ELT 428 (Karnataka High Court)], wherein it has been categorically held that a lower authority is bound to follow Tribunal's ruling and Apex Court's judgments and cannot take its own view although it may be, in its opinion, a correct view;
- In view of the above discussions, it is submitted that the Appellant has placed the Final Order of the Hon'ble CESTAT, New Delhi on record vide the letter accompanying the Refund Application. Vide the Final Order, the issue of

classification of the Resistor Blowers under CTI 8533 40 90 under the Customs Tariff stands settled in the favour of the Appellant;

- However as is evident from the impugned order, the adjudicating authority has not followed the verdict of such judgment and has not even provided any cogent reason or finding for non-consideration of the same. It is submitted that to this extent, the impugned order suffers from the vice of "judicial indiscipline" by refusing to follow binding precedent without any basis;
- The adjudicating authority has completely ignored the Delhi Tribunal order and all submissions made by the Appellant. The adjudicating authority has failed to take note of the Final Order passed by the Hon'ble CESTAT, New Delhi (which has attained finality) and is binding on the Ld. DC despite the submissions regarding the same made by the Appellant;
- It is well settled in law that authorities must consider, examine and deal with the submissions / contentions / issues made by the assessee and must pass an order by taking into account the submissions / contentions / issues raised by the assessee. In this regard, reliance is placed on the following judicial pronouncements:

  i. *Anil Products Limited vs. Commissioner of C. Ex., Ahmedabad-II, 2010 (257) E.L.T. 523 (Guj.);*
  ii. *Nitesh Kumar Kedia vs. Commissioner of Customs, Import & General, 2012 (284) E.L.T. 321 (Del.);*
  iii. *Gunnebo India Pvt. Ltd. Vs. Commr. Of Service Tax, Navi Mumbai-VII, 2019 (31) G.S.T.L. 34 (Bom.); and;*
  iv. *Coca Cola (I) Pvt. Ltd. v. CST, Delhi, 2015 (40) S.T.R. 547 (Tri-Del.)*

- In view of the above submissions made in the preceding paragraphs, it is submitted that the impugned order is liable to be set aside on the basis of this ground alone. Consequently, the refund of Rs.29.93.088/- is to be granted to the Appellant along with interest;
- The correct classification of the Resistor Blowers is under the CTI 8533 40 90 of the Customs Tariff which reads as "*Electrical resistors (including rheostats and potentiometers), other than heating resistors; Other variable resistors, including rheostats and potentiometers; Other*". For ready reference, the relevant portion of CTH 8533 of the Customs Tariff is extracted below for ready reference:

Tariff Item	***Description of Goods***	***Unit***	***Rate of Duty***
8533	***Electrical resistors (including rheostats and potentiometers), other than heating resistors***		
853310 00	*-Fixed carbon resistors, composition or film types*	*[u]*	
8533 29	*--Other* *-Wire wound variable resistors, including rheostats and potentiometers*		
	- Other variable resistors, including rheostats		

8533 40	*and potentiometers:*		
8533 40 90	*--- Other*	*[u]*	*Free*

- On the other hand, the Department is of the view that the Resistor Blowers merit classification under CTH 8415 under Customs Tariff which reads as *"Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated"*. The relevant portion of the same is provided below for ready reference:

Tariff Item	***Description of Goods***	***Unit***	***Rate of Duty***
8415	***Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated***		
8415 90 00	*- Parts*	*kg.*	*10%*

- Before making submissions on the classification of the Resistor Blowers, it is necessary to explain the general principles of classification and settled judicial precedents in this regard;
- To classify the goods under the Customs Tariff Act, it is imperative to scrutinize the goods in light of:a)
  a) The General Rules of Interpretation (hereinafter referred to as "**GRI**") which governs the Customs Tariff;
  b) The Explanatory Notes to the Harmonised Commodity Description and Coding System, generally referred to as Harmonised System of Nomenclature (herein after referred to as "**HSN**") published by the World Customs Organisation (hereinafter referred to as "**WCO**");
  c) Circulars and/or Instructions issued by the Central Board of Indirect Taxes and Customs (hereinafter referred to as "**CBIC**") to the extent they are not contrary to the precedents and law.

- For the classification of goods imported into India which are covered by the Customs Tariff, firstly, classification has to be analyzed as per the GRI;
- Rule 1 of the GRI is relevant in the instant case. The said Rule provides that the goods under consideration should be classified in accordance with the terms of the heading or relevant Section or Chapter Notes. Rule 1 of the GRI further states that in the event the goods cannot be classified solely on the basis of the Rule 1 of the GRI, the remaining Rules that are Rules 2 to 6 of the GRI may then be applied in a sequential order;
- The Section or Chapter Notes and Sub-Notes give detailed explanation as to the scope and ambit of the respective Section and Chapter. These notes have been

given statutory backing and have been incorporated at the top of each Chapter under the Customs Tariff Act;

- The Larger Bench of the Hon'ble CESTAT, Bombay in the case of Saurashtra Chemical, Porbandar vs. Collector of Customs-1986 (23) E.L.T. 283 (Tri.), has held that the Customs Tariff Act has to be interpreted in the light of relevant Section and Chapter Notes which have a statutory binding like the headings themselves. Thus, the Section and Chapter Notes have an overriding force on the respective headings. This judgment was approved by the Hon'ble Supreme Court of India in 1997 (95) E.L.T. 455 (S.C.);
- Further, General Explanatory Note 1 to the GRI describes the significance of symbols "-", "--", "---" and "----" appearing before various heading and sub-heading in the Customs Tariff Act;
- The aforesaid note states that if the description of an article or group under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where the description of an article or group of articles is preceded by "--" or "---", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the articles or group of articles which has "-".;
- The Customs Tariff of the Customs Tariff Act is based on the HSN published by the WCO and Explanatory Notes to HSN have long been recognized by courts as a safe guide to interpret the Customs Tariff Act;
- In the case of CCE vs. Wood Craft Products Ltd., (1995) 77 E.L.T. 23, the Hon'ble Supreme Court of India vide a 3-member bench held that in case of doubt, HSN is a safe guide for ascertaining true meaning of any expression used in the Act, unless there is an express different intention indicated in the Tariff itself. This decision was subsequently confirmed in the case of CC vs. Business Forms, 2002 (142) E.L.T. 18 (SC three-member bench);
- It is respectfully submitted by the Appellant in the following paragraphs that the Resistor Blowers are correctly classifiable under CTI 8533 40 90 under the Customs Tariff. As stated above, the classification of the imported goods under the Customs Tariff Act is to be done in accordance with GRI and in the event the imported goods cannot be classified solely on the basis of the Rule 1 of the GRI, the subsequent Rules of the GRI may then be applied;
- In the instant case, on a bare perusal of CTH 8533 under the Customs Tariff, it is submitted that the Resistor Blowers are covered under CTH 8533 and more specifically under CTI 8533 40 90;
- Also, since the Resistor Blowers fall under Section XVI of the Customs Tariff Act, the classification shall be governed by Notes to Section XVI, which covers Chapter 84 as well as Chapter 85. The classification of parts of machines under Chapters 84 and 85 is governed by Note 2 of Section XVI of the Customs Tariff Act;

- Note 2 to Section XVI of the Customs Tariff Act provides for the rules to be followed while classifying parts of machines falling under Chapters 84 and 85. The said Note is reproduced below for ready reference:

"2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules :

(a) ***parts which are goods included in any of the heading of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings****;*

(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of heading 8517 and 8525 to 8528 are to be classified in heading 8517;....."

(Emphasis supplied)

- Section Note 2(a) provides that parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) shall be classified in their respective heading. For example, a product (X), which is used as a part of any machine (Y), is covered as such in any of the headings of Chapter 84 or 85. In such a case, the product (X) will be classified under the heading covering that product (X) and not as part of machine (Y) as per Note 2 (a) to Section XVI of the Customs Tariff Act. The said rule shall not apply only if that product (X) is covered under headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548;
- That Section Note 2(b) is to be applied only in cases where such parts cannot be classified as per Section Note 2(a), i.e., if the parts are not goods included in any of the headings of Chapter 84 or 85. Section Note 2(b) provides for "other parts" which are suitable for use solely or principally with a particular kind of machine or with a number of machines falling under same heading. Therefore, Section Note 2(b) is applicable only in cases of those parts which are not covered within the ambit of Note 2(a) to Section XVI of the Customs Tariff Act;
- In other words, Note 2(a) to Section XVI of the Customs Tariff Act provides that parts which are goods included in any of the headings of Chapter 84 or 85, other than certain specified Chapter headings, are in all cases to be classified in their respective heading;
- Therefore, the Resistor Blowers, even if they are parts of air conditioning machines, they will still merit classification under CTH 8533 and more specifically under CTI 8533 40 90 under the Customs Tariff by virtue of Note 2 (a) to Section XVI (in terms of Rule 1 of GRI);

- The explicit use of the term "other parts" affirms the view that the said Section Note 2 (b) to Section XVI of the Tariff will apply to those other parts and accessories which are not covered under Section Note 2(a). Thus, the correct order to classify goods under Section XVI of the Customs Tariff Act would be to first refer to Section Note 2 (a) to Section XIV, and in case the same is not attracted, then reference is to be made to Section Note 2 (b) of the Section XIV;
- The above interpretation of the Section Note 2 has been approved by the Hon'ble Supreme Court in the case of Collector of Central Excise vs. Delton Cables Ltd. 2005 (181) E.L.T. 373 (S.C.);
- They also relied on the decision of the Hon'ble Supreme Court in the case of Secure Meters vs. Commissioner, 2015 (319) E.L.T. 565 (S.C.) wherein LCD bars made of liquid crystals used in electricity supply meters, was classified under CTH 9013 as Liquid Crystal Devices and not under CTH 9028 as parts of electricity meters. Following this decision of Supreme Court, the Hon'ble CESTAT, New Delhi in the case of Samsung India Electronics P. Ltd. vs. Commissioner of Customs, Noida, 2015 (326) E.L.T. 161 (Tri. - Del.) had held that imported LCD panels are to be classifiable under CTH 9013 and not under CTH 8529 as parts of television;
- Reliance in this regard is also placed on the following decisions: -

(a) Varroc Engineering P. Ltd. vs. C.C. (Import), Nhava Sheva, Raigad, 2019 (366) E.L.T. 170 (Tri.- Mumbai);
(b) ThyssenKrupp Industries India Pvt. Ltd. vs. C.C., 2016 (343) E.L.T. 533 (Tri.- Mumbai);
(c) Shankar Engg. & Mfg. Works. vs. Commr. of C.E., Patna, 1999 (114) E.L.T. 63 (Tri.);
(d) Commr. of C.E., Coimbatore vs. Venkatachalapathy Industries, 1999 (106) E.L.T. 176 (Tri.); and
(e) Arw Filter Pvt. Ltd. vs. Collector of Central Excise, Pune, 1998 (104) E.L.T. 83 (Tri.).

In view of the above, it is submitted that the Resistor Blowers are correctly classified by the Appellant under CTH 8533 under Customs Tariff by applying Section Note 2(a) to Section XVI.

- The Department is of the view that the Resistor Blowers are not merely resistors but are specific parts of a machine. Also, according to the Department, the only bare resistors that are covered under CTH 8533 do not contain printed circuit boards ("hereinafter referred to as "PCBs") whereas in the present case the multiple resistor assembly is with mounted PCBs and form an identifiable part of automatic air-conditioning system. Hence, Resistor Blowers cannot fall in the category of resistors;
- That CTH 8533 under the Customs Tariff covers all electrical resistors and the CTI 8533 40 90 is a residuary entry covering all variable resistors other than those specifically covered in the previous tariff entries under CTH 8533;

- It is incorrect on part of the Department to assume that the scope of CTH 8533 is restricted to bare resistors only. Even a resistor fitted with terminals allowing the same to be included in a circuit merits classification under CTH 8533 under the Customs Tariff. Moreover, even resistance boxes consisting of a number of resistors assembled in a box with switching or terminal arrangements for connecting any required combinations of resistors into the circuit are also covered within the scope of CTH 8533. They placed reliance on the the decision of Commissioner of Customs, Ahmedabad vs. Electrotherm (India) Ltd., 2002 (144) E.L.T. 553 (Tri. - Mumbai), wherein the classification of water-cooled electric resistor was in question. In this case the Hon'ble CESTAT had held that since the goods in question was performing the principal function of a resistor, the same is classifiable under Sub-heading 8533 29 under Customs Tariff as a resistor and not under residuary Sub-heading 8548.90;
- Applying the ratio of the above case law, it is submitted that irrespective of the fact that the Resistor Blowers consist of PCBs and a few other parts, the end usage of the said goods remains the same i.e. they function as resistors. Since there is a specific entry for the same, the resistor blowers are classifiable under CTH 8533 of the Customs Tariff;
- The Explanatory Notes to the HSN provide an illustrative list of resistors that are covered within the ambit of CTH 8533 under Customs Tariff, including non-linear resistors depending on temperature with a negative or positive temperature co-efficient (mounted in glass tubes) as well as resistance boxes with number of resistors assembled in a box with terminal arrangements. Relevant portion is extracted below for ready reference: -

*"**(A) Resistors (resistances).** There are conductors whose function is to provide a given electrical resistance in a circuit (e.g., to limit the current flowing). They vary greatly in size and shape, and in the materials of which they are made. They may be made of metals (in the form of bars, shapes or wire, often coiled in bobbins) or of carbon in the form of rods, or of carbon, silicon carbide, metal or metal oxide film. They may be obtained in the form of individual components by a printing process. Certain resistors may be fitted with a number of terminals allowing the whole or part to be included in the circuit.*

The heading includes:

...

*(4) **Standard resistors** used for comparison and measuring purposes (e.g. in laboratories); also resistance boxes consisting of a number of such resistors assembled in a box with switching or terminal arrangements for connecting any required combinations of resistors into the circuit.*

*(5) **Non-linear resistors:** depending on temperature (thermistors) with a negative or positive temperature coefficient (usually mounted in glass tubes), and non-linear resistors depending on voltage (varistors/VDR), but not including varistor diodes of heading 85.41."*

(Emphasis Supplied)

- On the basis of the afore-cited Explanatory Notes to the HSN, it can be seen that CTH 8533 specifically covers resistors fitted with terminals. Therefore, for the Resistor Blowers to be classified under CTH 8533, they do not necessarily have to be bare resistors and merely consisting of various items such as connectors, mounted PCBs, metal plates would not change their character and would not exclude them from being classified under the CTH 8533 under the Customs Tariff;
- Circular No. 78/2002-Cus. dated 28.11.2002 was issued in light of Zinc Oxide Discs – high energy, stable, non-liner resistors (varisters), being cleared by Customs under CTH 8533. The CBEC took a view that the resistors irrespective of their end use are classifiable under CTH 8533 under Customs Tariff in terms of Note 2 (a) to Section XVI of the Customs Tariff Act;
- The said Circular further noted that since the resistors in question were exclusively meant for surge arresters, the matter was referred to the WCO Secretariat. The WCO had also advised that the resistors in question therein were to be classified under CTH 8533 in terms of Rule 1 of GRI. It is a settled position of law that circulars are binding on the Department. Here, reliance is placed on the case of Union of India vs. Arviva Industries, 2007 (209) E.L.T. 5 (S.C.). Therefore, in terms of the aforesaid Circular, the Resistor Blowers also merit classification under CTH 8533 under Customs Tariff, even though they are meant for exclusive use in the automotive air-conditioning system;
- Thus, from the above referred GRI, Explanatory Notes, judicial precedents and Board Circular, it is submitted that the correct classification of the Resistor Blowers is under CTI 8533 40 90 and not CTI 8415 90 00;
- The issue of classification of Resistor Blowers has already been settled in Appellant's own case vide Final Order passed by the Hon'ble CESTAT, New Delhi. Vide the Final Order, the Hon'ble CESTAT, New Delhi had held that the Resistor Blowers had been correctly classified by the Appellant under CTI 8533 40 90;
- That the Final Order has attained finality since no appeal has been filed by the Department challenging the decision of the Hon'ble CESTAT, New Delhi in the case of the said Final Order;
- That the Department did not allow clearance of Resistor Blowers under CTH 8533 during the relevant period and called upon the Appellant to clear the goods under CTH 8415 of the Customs Tariff, basis the earlier proceedings. Hence, the Appellant was constrained to clear the consignments under CTH 8415 by paying duty "under protest" to avoid any delay in clearances. However, the Appellant did not agree with the classification and had paid the excess differential duty "under protest", which was otherwise not payable, to show the Appellant's bona fides;
- That the differential duty was paid "under protest" to avoid any delay in clearances. Also, the issue of classification of Resistor Blowers has attained finality in Appellant's own case (Final Order) and the same has not been appealed

against by the Department. Accordingly, the impugned order is liable to be set aside on the basis of this ground alone;

- In the similar issue i.e. period prior to the Honble Supreme Court judgment September 2019 the Commissioner (Appeal) had accepted their appeal with consequential relief vide Order No. NOI-CUSTM-000-APP-563-21-22 dated 16.08.2021 and finally the Asstt. Commissioner, Noida vide their Memorandum Order C No16/refund/Noida Customs/2023-24 dated 24.08.2023, sanctioned the refund of Rs. 1,94,41,051/-;
- In the instant matter the adjudicating authority has relied upon the judgment of Hon'ble Supreme Court of India in case of ITC Ltd., vs CCE Kolkata on 18th Sept 2019;
- The impugned order passed by the adjudicating authority is not correct as he has ignore the documents submitted in their Office;
- The adjudicating authority has not considered the following points related to the case :
  (a) The period of the refund claim is 11.05.2018 to 29.10.2019
  Whereas the Ld. AC has relied upon the judgment of Hon'ble Supreme Court delivered on 18th September 2019
  (b) They have submitted the letter of Under Protest vide letter dated 23.08.2018 in Pipavav Port which has not been considered by the adjudicating authority.
  (c) They relied upon the Rule/Act Section 27(1) in The Customs Act, 1962
- The order passed by the adjudicating authority is not correct as the he has not considered the letter of protest filed by them at Pipavav Port;
- In the similar matter the Commissioner (Appeals), Customs, Ahmedabad has accepted their appeal vide Order in Appeal No. JMN-CUSTM-000-APP-138 TO 189 -23-24 dated 21.12.2023, and was of the considered view that the RESISTOR BLOWER imported by the Appellant are classifiable under CTH 85334090 of the Customs Tariff Act 1975 and had allowed their appeal with consequential relief;
- That apart from the refund of differential duty paid "under protest" for the impugned BOEs during the relevant period, it shall also be entitled to interest on delayed refund as provided for under Section 27A of the Customs Act for the delay in sanctioning of refund under Section 27 of the Custom Act;. They placed reliance on the decisions of the Hon'ble Supreme Court in the following cases:-
  (a) Ranbaxy Laboratories vs. Union of India, 2011 (273) E.L.T. 3 (S.C.); and;
  (b) Union of India vs. Hamdard (Waqf) Laboratories, 2016 (333) E.L.T. 193 (S.C).

PERSONAL HEARING:

4. Personal hearing in the matter was held on 18.06.2025 in virtual mode, following the principles of natural justice. Shri Ankush Kaushik, Assistant Manager appeared for the hearing on behalf of the Appellant and re-iterated the submission made

at the time of filing the appeal. He also filed additional submissions, wherein, he reiterated his earlier submissions and further submitted that:

- In their case, the judgment of Hon'ble Supreme Court in the case of M/s. ITC Ltd., vs. CCE Kolkata would not be applicable as the impugned Bill of Entry pertains to the period from 11.05.2018 to 29.10.2019, i.e., period prior to Hon'ble Supreme Court judgment;
- The limitation period would not be applicable on them as they had duly submitted the letter for duty paid under protest and as referring to the second proviso of Section 27 (1) of the Customs Act, 1962, where it is stated that – "Provided further that the limitation of one year shall not apply where any duty or interest has been paid under protest;

DISCUSSION AND FINDINGS:

5. I have carefully gone through the impugned order, appeal memorandum, as well as submissions made by the Appellant during course of hearing as well as the documents and evidences available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority rejecting the refund claim on the below two counts, in the facts and circumstances of the case, is legal and proper or otherwise;

i. On the grounds of limitations;
ii. On the grounds relying upon the judgment of the Hon'ble Supreme Court in the case of M/s. ITC Ltd. reported at 2019 (368) E.L.T. 216 (S.C.);

5.1 Being aggrieved, the Appellant has filed the present appeal. As the appeal is against rejection of refund claim, pre-deposit under Section 129 E of the Customs Act, 1962, is not required. The appeal has been filed on 08.05.2024. In the Form C.A.-1, the date of communication of the Order-In-Original dated 23.04.2024 has been shown as 29.04.2024. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. As the appeal has been filed within the prescribed time-limit, it has been taken up for disposal on merits.

6. As the issue in hand pertains to rejection of the refund claim, it is relevant to refer to provisions of Section 27 are reproduced below:

"Claim for refund of duty.

27. *(1) Any person claiming refund of any duty or interest—*

(a) paid by him; or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest :

***Provided** that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, … … … :*

***Provided further** that the limitation of one year shall not apply where any duty or interest has been paid under protest:*

*[**Provided also** that where the amount of refund claimed is less than rupees one hundred, the same shall not be refunded.]*

[Explanation 1.] — For the purposes of this sub-section, "the date of payment of duty or interest" in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

(1A) … … … … …

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely :—

(a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year shall be computed from the date of issue of such order;

(b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;

(c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment."

6.1 From plain reading of second proviso to Section 27 of the Customs Act, 1962, it is observed that the limitation of one year shall not apply when duty or interest has been paid under protest. Sub-Section (1B) of Section 27 starts with the words, "Save as otherwise provided in this section" and therefore, the Second Proviso to Section 27 (1) will have overriding effect over Section 27(1B). The Appellant had claimed the refund of differential duty paid under protest for the impugned Bills of Entry. In my view, as the duty has been paid under protest, the limitation of one year from date of payment of duty for filing of refund claim is not applicable as per Second Proviso to Section 27(1).

6.2 It is observed from the facts of the present case that this is not a case of consequential refund, because the Appellant has not filed any appeal against the assessment of 72 Bills of Entry, for which they have claimed refund. It is observed that the refund application had been filed by the Appellant on the basis of the Delhi Tribunal decision in their own case, but the said decision did not cover the impugned 72 Bills of

Entry of the present appeal. Therefore, this is not a case of consequential refund and so, the provisions of clause (b) of Sub-section (1B) of Section 27 is not applicable in the present case.

7. As regards the merits of the case, it is observed that the adjudicating authority has relied upon the judgment of Hon'ble Supreme Court in the case of ITC Ltd. Vs. CCE, Kolkata-IV, reported as 2019 (368) E.L.T. 216 (S.C.) [18-09-2019], and held that:

> *"7. In view of the above judgment, every bill of entry is though the self-assessed, is an order; that if any importer is aggrieved, they are required to file appeal against each bill of entry, that however, in the instant case, the claimant had not preferred an appeal against the Bill of Entry* and the claimant had accepted of value enhancement without any protest or objection or without request of provisional assessment; therefore, if the claimant is not agreed with the said assessment of the value enhancement, they are required to file the appeal against the bill of entry, in the question within the prescribed time limit."

7.1 It has been contended by the Appellant that the judgment of Hon'ble Supreme Court in the case of M/s. ITC Ltd., vs. CCE Kolkata would not be applicable as the impugned Bill of Entry pertains to the period from 11.05.2018 to 29.10.2019, i.e., period prior to Hon'ble Supreme Court judgment. In this regard, it is pertinent to mention that the judgment of the Hon'ble Supreme Court in the case of M/s. ITC case *supra* covers the period prior to amendment and post-amendment of provisions by Finance Act, 2011. Hence, the contention of the Appellant are legally not sustainable and accordingly are rejected The relevant para of the Hon'ble Supreme Court in the case of M/s. ITC Ltd. reported at 2019 (368) E.L.T. 216 (S.C.) is reproduced below for ease of reference:

> *"**47.** When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."*

7.2 Considering the facts of the case, it is observed that the Appellant have submitted that they had not filed individual appeal against the 72 Bills of Entry, for which they have claimed the refund. In view of this position, the self-assessment made by the Appellant in those 72 Bills of Entry, including classification and rate of duty mentioned therein, became final. I find that the ratio of the above said decision is squarely applicable in this case inasmuch as the Appellant have accepted the assessment regarding classification in respect of impugned Bills of Entry and such assessment have not been challenged by the Appellant. Hence, I am of the considered view that the assessment

has attained finality and cannot be reopened by way of claiming refund, as held by the Hon'ble Supreme Court in the ITC case *supra*. The facts remains that the Appellant had accepted the assessment and did not challenge it by filing appeal. Merely stating that the payment was made under protest will not entitle the benefit to the Appellant without taking consequential and necessary steps by challenging the assessment. Hence, I am of the considered view that without challenging the final assessment, the refund claim could not be entertained. In view thereof, I do not find any infirmity in the findings of the adjudicating authority to the extent of rejecting the refund claim on the basis of ratio of Hon'ble Supreme Court in the case of M/s. ITC case *supra*.

8. Accordingly, the appeal filed by the Appellant is rejected.

(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-53/CUS/AHD/2024-25 2383

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