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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

W.P.(C) 1962/2016

DIGIPRO IMPORT & EXPORT PVT. LTD ..... Petitioner

Through: Mr.Priyadarshi Marish, Mrs. Anjali J. Marish, Mr. Rahul Ranjan and Mr.Sagar Ruthogi, Advs.

versus

THE COMMISSIONER OF CENTRAL EXCISE, DELHI-1, & ANR. ..... Respondents

Through: Mr. Pramod Kr. Rai, Sr. Standing counsel and Mr.Deepak Anand, Jr. Standing counsel.

\+ **W.P.(C) 2504/2016**

S.B. INDUSTRIES ..... Petitioner

Through: Mr. S. Ganesh, Sr. Adv. with Mr. Priyadarshi Marish and Mrs. Anjali J. Marish, Advs.

versus

THE COMMISSIONER OF CENTRAL EXCISE, DELHI-I & ANR. ..... Respondents

Through: Mr.Amit Bansal and Mr. Akshil Kulshrestha, Advs. for R-1 and R-2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>O R D E R</u>

% **02.11.2016**

10. The controversy in these two petitions are that the article imported by the petitioner falls within the description "components imported for use in the manufacturing of battery charger", entry No 431 of the Notification No. 12/2012-Cus dated 17.03.2012. The petitioner's article finally assembled and marketed by the petitioner described as "portable mobile charger/power bank".

11. The petitioner for the 20 assignments, which are subject matter of these proceedings, ready to provide security bond for the same. The grievance is that the classification indicated by the concerned custom officer while issuing the impugned demand i.e. "they are not battery chargers but the power banks" and consequently classifiable as electric accumulators classified by Chapter 850790 of the Central Excise Act.

12. Learned senior counsel appearing for the petitioner urges that having regard to the functions and the purpose of these products, the benefit of exemption ought to be granted and that without an appropriate adjudication the demand could not have been raised.

13. Learned counsel for the revenue, on the other hand, repeated that classification was indicated in the demand notice.

14. It is apparent from the record that consignments were imported in 2015; till date the custom authorities have not issued a show cause notice. In the circumstance, if the custom authorities are of the opinion that the imports are ineligible for the exemption, they have to issue show-cause notice and elucidate the response of the petitioner and importers.

15. Respondents are directed to follow that course and issue notice

within next two weeks and depending on the replies and responses of the petitioner, conclude the hearing and pass final orders at the earliest convenience preferably within three months from today.

16. The petitioner is also at liberty to seek clarification from the Central Board of Excise and Customs(CBEC) in terms of Section 37(b) of the Central Excise Act read with the concerned provisions of the Customs Act with respect to the appropriate classification and permissibility of exemption of the article so imported. CBEC shall consider the petitioner's representation and pass appropriate order/clarification in this regard within three months of receipt of the petitioner's representation.

17. In the circumstances the impugned demands are set aside. The writ petitions are partly allowed in above terms.

18. Copy of the order be given *dasti*.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 02, 2016

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