

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 50727 OF 2021

(Arising out of Order-in-Original No. DLI/CUS.PREV/GS/Pr.Commr/14/2020-21 dated 31.03.2021 passed by the Principal Commissioner of Customs, Customs Preventive, New Delhi)

M/s Samsung India Electronics Pvt. Ltd.

.....Appellant

B-1, Sector 81, Phase-II
Noida – 201 305 (UP)

VERSUS

Principal Commissioner of Customs

.....Respondent

Customs Preventive, New Customs House
Near IGI Airport
New Delhi – 110 037

WITH

(filed by manufactures)

C/50751/2021

C/51769/2021

C/51791/2021

C/50274/2022

C/50798/2021

C/51780/2021

C/50027/2022

C/52188/2022

C/51732/2021

C/51790/2021

C/50072/2022

AND

(filed by department)

C/54678/2023 C/55076/2023

APPEARANCE:

Shri B.L. Narasimhan, Ms. Nupur Maheshwari, Shri Siddhant Indrajit, Shri Ashwin Sundaram, Shri Kishore Kunal, Ms. Runjhun Pare, Shri Jayesh, Shri Srinivas Kotni, Shri Akshay Kumar and Ms. Madhumita Singh, Advocates for the Appellants

Shri S.K. Rahman, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 27.01.2025

DATE OF DECISION: 23.06.2025

FINAL ORDER NO's. 50896-50909/2025

JUSTICE DILIP GUPTA:

The issue involved in these fourteen appeals is:

Whether lithium-ion batteries imported and used in the manufacture of mobile phones are chargeable to ad valorem Integrated Goods and Service Tax¹ @ 12% under Serial No. 203 of Schedule II of the Notification No. 01/2017-IT (Rate) dated 28.06.2017² as claimed by the manufacturers of mobile phones, or @ 28% under Serial No. 139 of Schedule IV to the IGST Rate Notification for the period from 01.04.2018 to 26.07.2018, and @ 18% under Serial No. 376AA of Schedule III to the IGST Rate Notification w.e.f. 27.07.2018 as claimed by the department.

2. To appreciate this issue, it would be appropriate to refer to the facts of Customs Appeal No. 50727 of 2021 that has been filed by M/s. Samsung India Electronics Pvt. Ltd.³.

3. Samsung India is in the business of manufacture of mobile phones in India. Lithium-ion batteries are used in portable electronics, such as mobile phones and tablets. They are specifically designed as per the requirements of each model of mobile phone and are said to be lightweight and long lasting. They are capable of having a very high voltage and charge storage per unit mass and volume. Samsung India imported lithium-ion batteries for use in the manufacture of mobile phones. It classified them under Customs Tariff Item⁴ 8507 60 00 of the First Schedule to the Customs Tariff Act, 1975⁵ and discharged IGST @

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1. **IGST**
 2. **IGST Rate Notification**
 3. **Samsung India**
 4. **CTI**
 5. **the Customs Tariff**

12% in terms of Serial No. 203 of Schedule-II to the IGST Rate Notification. Samsung India also, during the relevant period, discharged basic customs duty @ 15% by claiming benefit under Serial No. 17 of Notification No. 57/2017-Cus dated 30.06.2017. There is no dispute regarding payment of this basic customs duty. It is the rate of IGST which is the subject matter of the appeals.

4. The competing entries under the IGST Rate Notification claimed by Samsung India and the Department are reproduced below:

Period	Competing Entry as per Samsung India with rate of duty	Competing Entry as per department with rate of duty
01.04.2018 to 26.07.2018	12% under Serial No. 203 of Schedule II	28% under Serial No. 139 of Schedule IV
27.07.2018 to 19.03.2020	12% under Serial No. 203 of Schedule II	18% under Serial No. 376AA of Schedule III

5. The details of the relevant entries as per the IGST Rate Notification are also tabulated below:

Period	S. No. 203 (12%)	S. No. 376AA (18%)	S. No. 139 (28%)
Prior to 26.07.2018	Parts for manufacture of Telephones for cellular networks or for other wireless networks	Was not inserted	Electric accumulators, including separators therefore, whether or not rectangular (including square)
From 26.07.2018 to 31.03.2020	Parts for manufacture of Telephones for cellular networks or for other wireless networks	Lithium-ion Batteries	Electric accumulators, including separators therefore, whether or not rectangular (including square) other than Lithium-ion battery and other Lithium-ion accumulators including Lithium-ion power banks
Post 31.03.2020	Omitted	Lithium-ion Batteries	Electric accumulators, including separators therefore, whether or not rectangular (including square) other than Lithium-ion battery and other Lithium-ion accumulators including Lithium-ion power banks

6. A show cause notice dated 27.06.2020 was issued to Samsung India under section 28(1) of the Customs Act alleging that lithium-ion batteries

imported by Samsung India will be leviable to IGST under Serial No. 139 of Schedule IV to the IGST Rate Notification attracting IGST @ 28% for the period upto 26.07.2018 and thereafter w.e.f 27.07.2018 IGST @ 18% as per Serial No. 376AA of Schedule III to the IGST Rate Notification. The main allegations contained in the show cause notice are:

- (i) Samsung India imported lithium-ion batteries classifying them under CTI 8507 60 00 and cleared the goods on payment of IGST @ 12% by availing the benefit of Serial No. 203 of Schedule II to the IGST Rate Notification, though it appeared that Serial No. 139 of Schedule IV to the IGST Rate Notification attracting IGST @ 28% was applicable. Further, an amendment was made on 27.07.2018 by including a more specific entry under Serial No. 376AA of Schedule III to the IGST Rate Notification under which lithium-ion batteries would attract IGST @ 18%;
- (ii) In view of Explanation (iv) to the IGST Rate Notification, the rules for the interpretation of the First Schedule to the Customs Tariff, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of the Rate Notification;
- (iii) On application of Note 2(a) of Section XVI, parts which are goods included in any of the headings of Chapter 84 or 85 are in all cases to be classified in their respective headings. The mobile phones are classifiable under Customs Tariff Heading⁶ 8517 of the Customs Tariff and CTI 8517 70 90 covers 'parts for telephones for cellular networks or for other wireless networks'. Hence, the items which are specifically

mentioned in CTH 8507 are excluded from CTI 8517 70 90 irrespective of whether they are used solely or principally with the telecommunications equipments of CTH 8517; and

- (iv)** It, therefore, appears that 'lithium-ion batteries' for the use of mobile phone are classified under the more specific CTI 8507 60 00 rather than the generalized heading. Samsung India, therefore, resorted to wrong classification of goods.

7. The show cause notice also proposed confiscation of lithium-ion batteries under section 111(m) of the Customs Act and proposed penalty under section 112(a)(ii) of the Customs Act.

8. Samsung India filed a reply to the show cause notice and refuted the allegations made therein. The submissions that were raised are broadly:

- (i)** Samsung India imports lithium-ion batteries for use in manufacturing of mobile phones. A mobile phone consists of lithium-ion battery as its most vital part/component for its operation. Lithium-ion battery is a type of rechargeable battery which is commonly used for portable electronics. The batteries have high energy density and low self-discharge and are, therefore, commonly used in the manufacture of mobile phones as primary part, without which the mobile phone cannot function;
- (ii)** Lithium-ion batteries imported by Samsung India deserve classification under CTI 8507 60 00 of the First Schedule to the Tariff Act;
- (iii)** IGST @ 12% upto 26.07.2018 is provided for in the IGST Rate Notification at Serial No. 203 of Schedule II for parts

for manufacture of telephones for cellular networks or for other wireless networks;

- (iv)** While importing lithium-ion batteries which do not go in manufacturing process of mobile phones but are traded as such to cater to after sales operations, Samsung India discharged CST @ 18%, but if lithium-ion battery was used in the manufacture of mobile phones as one of its parts, Samsung India discharged the applicable IGST @ 12% as specified in the IGST Rate Notification;
- (v)** Lithium-ion battery is a 'part' of mobile phones, basis technical functionality and general parlance; and
- (vi)** The show cause notice deserves to be dropped for the reason that the department has merely alleged that lithium-ion battery would fall under entry No. 139 of Schedule IV or 376AA of Schedule III to the IGST Rate Notification without providing any reason as to why lithium-ion battery would be outside the purview of entry 203 of Schedule II, despite the fact that the said entry specifically mentions the criterion of import being undertaken 'for manufacture of telephones for cellular networks', as opposed to Entries 139 of Schedule IV and 376AA of Schedule III which merely mention electric accumulator/ lithium battery, respectively.

9. The Principal Commissioner, by order dated 31.03.2021, confirmed the demand of IGST for the following reasons:

- (i)** The General Rules of Interpretation⁷ read with Section and Chapter Notes are used for determining the classification under the Customs Tariff. Explanation (iv) to the IGST Rate Notification provides that the principles of classification, as

are followed under the Customs laws, are to be followed under the IGST laws as well. They are, therefore, equally applicable for interpreting IGST Rate Notification. Hence, specific entries at Serial No. 139 of Schedule IV covering 'Electronic accumulators' and Serial No. 376AA of Schedule III covering 'Lithium-ion Batteries' will prevail over Serial No. 203 of Schedule II, that covers 'parts for manufacture of telephones for cellular networks';

- (ii)** Note 2(a) of Section XVI of the Customs Tariff provides that parts which are goods included in any of the Customs Tariff Headings of Chapter 84 or 85, other than few headings specified in the said Note, are in all cases to be classified in their respective Customs Tariff Headings. It is because of application of Notes 2(a) and 2(b) that the entries in the IGST Rate Notification have been bifurcated into Serial No. 202 and Serial No. 203 of Schedule II to the IGST Notification;
- (iii)** Rule 3(a) of GRI provides that CTH which provides the most specific description shall be preferred to the CTH providing a more general description. Thus, the subject goods which are more specifically mentioned in CTH 8507 are excluded from falling under CTI 8517 70 90 and should be more specifically classified under CTI 8507 60 00 of the Customs Tariff, rather than the generalized CTH;
- (iv)** On a similar reasoning, GRI will also be applicable for interpreting the IGST Rate Notification. The usage of the phrase 'for manufacture' in Serial No. 203 of Schedule II of IGST Rate Notification, restricts 'parts' to be covered under the said entry to those parts which fall under CTI 8517 70

90. Further, a mere usage of such phrase cannot disregard the application of GRI; and

- (v)** Likewise, Serial No. 376AA of Schedule III that provides 'Lithium-ion batteries' falling under CTI 8507 60 00 is more specific when compared to Serial No. 203 that provides for 'parts for manufacture of Telephones for cellular networks or for other wireless networks' falling under Chapter 85.

10. Similar show cause notices were issued to other manufacturers of mobile phones in India and similar orders were passed. These orders have been assailed in Customs Appeal No's. 50751 of 2021; 50798 of 2021; 51732 of 2021; 51769 of 2021; 51780 of 2021; 51790 of 2021; 51791 of 2021; 50027 of 2022; 50072 of 2022; 50274 of 2022; and 52188 of 2022.

11. Customs Appeal No. 54678 of 2023 and Customs Appeal No. 55076 of 2023 have been filed by the department to assail the orders dated 16.01.2023 and 09.03.2023 passed by the Commissioner (Appeals) by which the orders dated 04.02.2021 and 08.02.2021, respectively, passed by the Additional Commissioner confirming the demand of IGST have been set aside and the appeals have been allowed.

12. Shri B.L. Narasimhan, learned counsel assisted by Ms. Nupur Maheshwari, Shri Siddhant Indrajit and Shri Ashwin Sundaram made submissions on behalf of the appellants in Customs Appeal No's. 50727 of 2021; 50751 of 2021; 50798 of 2021; 51732 of 2021; 50072 of 2022; 52188 of 2022 and on behalf of the respondents in Customs Appeal No's. 54678 of 2023 and 55076 of 2023 filed by the department.

13. Shri Kishore Kunal, learned counsel assisted by Ms. Runjhun Pare and Shri Jayesh, made submissions on behalf of the appellants in Customs

Appeal Nos. 51769 of 2021; 51780 of 2021; 51790 of 2021 and 51791 of 2021.

14. Shri Srinivas Kotni, learned counsel assisted by Shri Akshay Kumar, made submissions on behalf of the appellant in Customs Appeal No. 50027 of 2022.

15. Ms. Madhumita Singh, learned counsel made submissions on behalf of the appellant in Customs Appeal No. 50274 of 2022.

16. Shri B.L. Narasimhan, learned counsel made the following submissions:

- (i)** Lithium-ion batteries imported by Samsung India for the purpose of manufacture of mobile phones are chargeable to IGST at the rate of 12% as per Serial No. 203 of Schedule II to the IGST Rate Notification. IGST Rate Notification is a rate notification under which IGST is levied and collected by the Government. Considering that IGST Rate Notification is a taxing notification, it must be strictly construed and even if it is assumed that there are two interpretations possible, the Courts ought to interpret it in favour of the taxpayer and against the revenue;
- (ii)** Serial No. 203 of Schedule II to the IGST Rate Notification is a unique entry. On the contrary, Chapter 85 of the Tariff Act reads as 'Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles'. Thus, the description appearing in column (3) to Serial No. 203 of Schedule II to the IGST Rate Notification does not match with the Customs

Tariff. Hence, Serial No. 203 of Schedule II to the IGST Rate Notification is a unique (sui generis) entry;

- (iii)** All the conditions mentioned in column (2) and column (3) to Serial No. 203 of Schedule II to the IGST Rate Notification stand satisfied. Accordingly, Samsung India has rightly discharged IGST@ 12%;
- (iv)** The impugned order has applied GRI along with the Section and Chapter Notes to hold that Serial No. 139 of Schedule IV (till 26.07.2018) and Serial No. 376AA of Schedule III (from 27.07.2018 to 19.03.2020) to be more specific earlier when compared to Serial No. 203 of Schedule II to the IGST Rate Notification. However, the impugned order fails to take note of the phrase 'so far as may be', appearing in Explanation (iv) to the IGST Rate Notification. The Courts have consistently held that the phrase 'so far as may be' should be interpreted to mean 'to the extent possible';
- (v)** Thus, GRI as provided in the Tariff Act, cannot be blindly relied upon while identifying the applicable taxing entry under the IGST Rate Notification. The GRI and other tools for interpreting the Tariff Act are applicable to the extent possible only while interpreting IGST Rate Notification. Therefore, reliance placed on Notes 2(a) and 2(b) to Section XVI and later to GRI Rule 3(a) of the Customs Tariff is incorrect in law;
- (vi)** A taxing statute must be interpreted in a manner not to make any entry redundant;
- (vii)** A perusal of the Agenda for 31st GST Council Meeting dated 22.12.2018 at Serial No. 16 shows that it clarifies that the GST on lithium ion battery falling under CTI 8507 60 00 shall

be 12% when used for the manufacture of mobile phones. In fact, in the Agenda for 39th GST Council Meeting dated 14.03.2020, it was clarified that the 'parts' falling under Chapter 85 used in the manufacture of mobile phones attract 12% GST. It was this duty structure that was recommended to be increased from 12% to 18%. In other words, till the 39th GST Council meeting, the intention was always to charge 12% GST for 'parts' used in the manufacture of cellular mobile phones. Therefore, Samsung India rightly discharged the IGST @12% under Serial No. 203 of Schedule II to the IGST Rate Notification;

- (viii)** Lithium-ion batteries cannot be held liable for confiscation under section 111(m) of the Customs Act. Thus, redemption fine and penalty cannot be imposed;
- (ix)** No penalty or interest or redemption fine is leviable on the Samsung India in the absence of machinery provisions; and
- (x)** The Commissioner (Appeals) committed no error in holding that lithium-ion batteries imported for the manufacture of mobile phones are covered under entry at Serial No. 203 of Schedule II to IGST Rate Notification.

17. Shri Kishore Kunal, learned counsel made the following submissions:

- (i)** In entry at Serial No. 203 to the IGST Rate Notification, there are only two requirements which are to be fulfilled, namely, that the imported goods have to be of Chapter 85 and the imported goods have to be parts for the manufacture of telephones for cellular networks or for other wireless networks. There is no dispute in the present case that both the requirements of entry at Serial No. 203 to the IGST Rate Notification are satisfied by the imported goods;

- (ii)** The Commissioner of Customs, ACC-Import, by a communication dated 22.08.2017, specifically clarified that when battery is imported for manufacture of mobile phones, it will be covered under entry at Serial No. 203 attracting IGST @ 12%, but when such batteries are imported as an accessory they will be covered under entry at Serial No. 139 are attracting IGST @ 28% upto;
- (iii)** The entries of the Customs Tariff and IGST Rate Notification are not aligned and accordingly, Chapter Notes of the Customs Tariff cannot be applied to IGST Rate Notification. The impugned order has erroneously held that since the Customs Tariff the imported goods are classified as 'lithium-ion batteries' under CTI 8507 60 00 and under CTH 8517 as parts of mobile phones, therefore, the imported goods will be classified under Serial No. 139 of Schedule IV as electric accumulators or under Serial No. 376AA of Schedule III as 'lithium-ion batteries' and not under Serial No. 203 as parts of mobile phones. While holding so, the impugned order has completely overlooked that the entries in the Customs Tariff and the IGST Rate Notification are not aligned and, therefore, classification of the imported goods under the Customs Tariff cannot be read into the IGST Rate Notification;
- (iv)** Explanation (iv) to the IGST Rate Notification cannot be made the basis to apply Section Note 2(a) of section XVI to the IGST Rate Notification;
- (v)** Serial No. 203 of Schedule II to the IGST Rate Notification is more specific for lithium-ion batteries as compared to Serial No. 139 of Schedule IV or Serial No. 376AA;

- (vi)** The entry beneficial to the manufacturers of mobile phones ought to have been applied to the imported goods;
- (vii)** The entire demand of IGST is Revenue neutral;
- (viii)** Demand of IGST cannot be raised under section 28 of the Act;
- (ix)** As the goods not liable to confiscation, no redemption fine or penalty should be imposed; and
- (x)** The Commissioner (Appeals) committed no error in holding that lithium-ion batteries imported for the manufacture of mobile phones are covered under entry at Serial No. 203 of Schedule II to IGST Rate Notification.

18. Shri Srinivas Kotni and Ms. Madhumita Singh also made submissions which are covered by the submissions advanced by Shri B.L. Narasimhan and Shri Kishor Kunal.

19. Shri S.K. Rahman, learned authorized representative appearing for the department, however, made the following submissions:

- (i)** Lithium-ion batteries imported by the manufacturers of mobile phones are chargeable to IGST @ 28% under Serial No. 139 of Schedule IV to the IGST Rate Notification upto 26.07.2018 and thereafter chargeable to IGST @ 18% under Serial No. 376AA of Schedule III to IGST Rate Notification;
- (ii)** Explanation (iv) to the IGST Rate Notification applies General Rules of Interpretation of First Schedule to the Customs Tariff and, therefore, specific description would be preferred over the general heading;
- (iii)** The impugned goods are 'lithium-ion battery' under CTI 8507 60 00 under CTH 'electric accumulators';

- (iv)** The manufacturers of mobile phones cannot choose CTI 8507 60 00 for the purposes of customs and CTI 8517 70 90 for the purposes of IGST;
- (v)** CTH 8507 is excluded from CTI 8517 70 90;
- (vi)** No mechanism exists to verify the usage of battery. The words 'for manufacture' of mobile phones is not based on end use of the product. However, the usage of post-importation is not the concern of the department and the appropriate IGST has to be charged at the time of import of the goods;
- (vii)** The manufacturers of mobile phones had mis-classified the goods with intention to evade beneficial IGST @ 12%. Thus, the goods have been rendered liable to confiscation under section 111(m) of the Customs Act and accordingly redemption fine has been correctly imposed;
- (viii)** Penalty has been correctly imposed under section 112(a)(ii) of the Customs Act; and
- (ix)** The Commissioner (Appeals) committed an error in holding that the lithium-ion batteries imported by manufacturers of mobile phones would fall under Serial No. 203 of Schedule II to the IGST Rate Notification.

20. The submissions advanced by the learned counsel for the manufacturers of mobile phones and the learned authorized representative appearing for the department have been considered.

21. The manufacturers of mobile phones had imported lithium-ion batteries for use in the manufacture of mobile phones. These batteries, according to them, are specifically designed as per the requirements of each model of a mobile phone and are light weight and long-lasting.

Lithium-ion battery is a type of rechargeable battery which is commonly used for portable electronics. The batteries have high energy density and low self-discharge and are, therefore, commonly used in the manufacture of mobile phones as primary part, without which the mobile phone cannot function.

22. The IGST Rate Notification, which is a Rate Notification, provides for levy of IGST. For the period upto 19.03.2020, the manufacturers of mobile phones discharged IGST @ 12% under Serial No. 203 of Schedule II to the IGST Rate Notification, while according to the department, the manufacturers of mobile phones should have discharged IGST @ 28% under Serial No. 139 of Schedule IV to the IGST Rate Notification for the period upto 26.07.2018, and thereafter @ 18% under Serial No. 376AA of Schedule III to the IGST Rate Notification.

23. It would, therefore, be appropriate to examine the entries at Serial No. 203 of Schedule II, Serial No. 139 of Schedule IV and Serial No. 376AA of Schedule III.

24. The Chapter mentioned for goods at Serial No. 203 is Chapter 85 and the description of goods is 'parts for manufacture of Telephones for cellular networks or for other wireless networks'. The Heading of goods at Serial No. 139 is CTH 8507 and the description of goods is 'Electric accumulators, including separators thereof whether or not rectangular (including square)'. The Customs Tariff Item of goods at Serial No. 376AA is CTI 8507 60 00 and the description of goods is 'lithium-ion battery'.

25. It is not in dispute that lithium-ion batteries were imported into India for use in the manufacture of mobile phones by classifying them under CTI 8507 60 00 and IGST was discharged by the manufacturers of mobile phones on the import of lithium-ion battery @ 12% in terms of

Serial No. 203 of Schedule II to the IGST Rate Notification. As noticed above, the description of goods for Serial No. 203 upto 31.03.2020 was 'parts for manufacture of telephones for cellular networks or for other wireless networks'. It attracted IGST @ 12%.

26. The manufacturers of mobile phones have relied upon the communication dated 22.08.2017 sent by the Commissioner of Customs, ACC-Import, New Delhi to contend that IGST @ 12% was to be levied for the import of lithium-ion battery. The relevant portion of the communication dated 22.08.2017 is reproduced:

"Subject:- Clearance of Mobile phone parts under Notification No. 57/2017-Cus dated 30.06.2017 and Problems regarding customs clearance for manufacturing.

Gentlemen,

Reference is invited to e-mail dated 4th August, 2017 and 17th August, 2017 on the subject cited above.

(A) Clearance of Mobile phone parts under Notification No. 57/2017-Cus dated 30.06.2017.

Prior to introduction of IGST the importers of parts of mobile phones for manufacturing were availing concessional rate of duty under Notification No. 12/2012-Cus dated 17.03.2012 majorly under Sl. No. 431 which covered items classified under any chapter of the Customs Tariff Act, 1975 and provided for NIL rate of duty (BCD & CVD) subject to condition 5, irrespective of the classification.

2. With the introduction of IGST the concessional rate of duty for manufacturer of mobile phones is admissible as per Notification No. 57/2017-Cus dated 30.06.2017 which specifies certain items for which the concessional rate of duty is available on fulfillment of certain conditions. With

introduction of new Notification the classification of the item and proper description has assumed greater significance and accordingly importers and Custom Brokers have been sensitized.

(B) Problems regarding customs clearance for manufacturing.

Items namely charger, battery packs, wired headsets and earphones are classified under different Tariff Headings under chapter 85 of the Indian Customs Tariff Act, 1975.

2. As regards battery packs the same are charged to IGST @ 28% if they are imported as spares. On the other hand if the same are imported for manufacture of mobile phone they are charged to IGST @ 12%.

3. As per Sl. No. 203 Schedule-II, IGST @ 12% is applicable only for Parts for manufacture of Telephones for cellular networks or for other wireless networks.

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27. A perusal of the aforesaid clarification provided by the Commissioner of Customs clearly shows that battery packs are charged to IGST @ 28% if they are imported as spares. On the other hand, if they are imported for manufacture of mobile phones, they are charged IGST @ 12%. The communication further clarifies that as per Serial No. 203 of Schedule II, IGST @ 12% is applicable only for parts for the manufacture of telephones for cellular networks or for other wireless network.

28. The manufacturer of mobile phones involved in these appeals have, therefore, justified the payment of IGST @ 12% on the imports of lithium-ion batteries on the basis of the aforesaid clarification issued by the Commissioner of Customs ACC-Import, New Delhi.

29. It would also be useful to examine the Agenda for the 31st GST Council Meeting held on 22.12.2018 and the Agenda for the 39th GST Council Meeting held on 14.03.2020.

30. The relevant portion of the Agenda of the 31st GST Council Meeting held on 22.12.2018, which was after the introduction of Serial No. 376AA to the IGST Rate Notification, is reproduced below:

S. No.	Description	HSN	Present GST Rate (%)	Requested GST Rate (%)	Comments
16	Power Banks of lithium ion battery	8507	28%	18%	<p>1. GST on lithium ion battery falling under tariff line 8507 60 00 was reduced from 28% to 18% [with effect from 27.07.2018] based on the recommendation of 28th GST Council meeting. When used for manufacture of mobile phones these attract 12% GST rate.</p> <p>2. Power banks consisting of lithium ion battery however attract 28% GST.</p> <p>3. Power bank supplier have represented that it should be given the same tax treatment as given to lithium ion battery.</p> <p>4. To reduce dispute in assessment Fitment Committee recommends reduction of GST from 28% to 18% on all kind of lithium ion accumulators, including power bank.</p>

31. A perusal of the aforesaid Agenda shows that when lithium-ion batteries are used for manufacture of mobile phones, they would attract @ 12% GST Rate.

32. The relevant portion Agenda for the 39th GST Council Meeting held on 14.03.2020 is reproduced below:

"4.3 Accordingly, based on the above discussion, Fitment Committee recommends that the GST rate on mobile phones and its parts (falling under Chapter 85) may be increased from 12% to 18% (on par with other consumer goods items) in order to remove the inversion in rates on the mobile phones."

33. This shows that the Fitment Committee recommended that the GST rate on mobile phones and its parts (falling under Chapter 85) may be increased from 12% to 18% in order to remove the inversion in rates on the mobile phones. Thus, this also acknowledges that GST rate for parts of mobile phones was 12% and it was raised to 18%.

34. It is seen that post 31.03.2020, Serial No. 203 of Schedule II was omitted and, therefore, lithium-ion batteries would attract 18% IGST.

35. It would be clear from the aforesaid discussion that lithium-ion batteries when used for manufacture of mobile phones would attract 12% IGST upto 31.03.2020, whereafter on the omission of Serial No. 203, lithium-ion batteries for the manufacture of mobile phones would attract IGST @ 18%. However, if lithium-ion batteries were not used in the manufacture of mobile phones, they would attract IGST @ 28% in terms of Serial No. 139 upto 26.07.2018 and @ 18% under Serial No. 376AA from 27.07.2018 to 31.03.2020.

36. Learned counsel for the mobile manufacturers of mobile phones also submitted that Serial No. 203 of Schedule II to the IGST Rate Notification is a unique entry because though IGST Rate Notification is majorly aligned with the Customs Tariff, but Serial No. 203 and some other entries are special and unique which demonstrate non alignment between the two.

The submission, therefore, is that Serial No. 203 must be interpreted purely in terms of the language used in the said entry.

37. A perusal to the IGST Rate Notification shows that in the introductory paragraph it provides that IGST shall be levied on inter-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedule, falling under the Tariff Item, Sub-Heading, Heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule.

38. Essentially, therefore, two conditions are required to be satisfied for attracting IGST as per the specific entries in the IGST Rate Notification. They are that the imported goods have to be of Chapter 85 and the imported goods have to be parts for the manufacture of telephones for cellular networks or for other wireless networks. The Chapter referred to at Serial No. 203 is Chapter 85. Lithium-ion battery are classified under CTI 8507 60 00. Thus, the condition mentioned in column (2) to Serial No. 203 is satisfied. Lithium-ion batteries are imported by the mobile phone manufacturer for manufacture of mobile phones and, therefore, the description of the imported goods matches the description of the goods in column (3). In terms Serial No. 203 of Schedule II, the import of lithium-ion battery would attract IGST @ 12%.

39. The Principal Commissioner has applied GRI together with Section and Chapter Notes to hold that Serial No. 139 of Schedule IV upto 26.07.2018 and thereafter Serial No. 376AA of Schedule II from 27.07.2018 to 19.03.2020 is more specific when compared to Serial No. 203 of Schedule II.

40. It would, therefore, be appropriate reproduce Explanation (iv) to the IGST Rate Notification. It is as follows:

"(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, so far as may be, apply to the interpretation of this notification."

41. Rule (2) of GRI is reproduced below:

"2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3."

42. It will also be useful to reproduce Section Note (2) of section XVI and it is as follows:

"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 headings 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 headings 8517 and 8525 to 8528 are to be classified in heading 8517;
- (c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548."

43. A perusal of the aforesaid Explanation (iv) to the IGST Rate Notification shows that the Rules for the Interpretation of the First Schedule to the Customs Tariff, including the Section and Chapter Notes and the General Explanatory Notes shall, **so far as may be**, apply to the interpretation of this Notification.

44. Learned counsel for the manufacturers of mobile phones submitted that as the IGST Rate Notification is not aligned completely with the Customs Tariff, Section Note (2) to section XVI would not apply because of the use of the phrase 'so far as may be' which means that the rules may be generally followed to the extent possible.

45. However, the contention of the learned authorized representative appearing for the department is that in view of Explanation (iv) to the IGST Rate Notification and in view of Note 2(a) of section XVI of the Customs Tariff to the IGST Rate Notification, lithium-ion batteries classifiable under CTI 8507 60 00 cannot be classified against entry at

Serial No. 203 since parts which are independently classifiable under Chapter 85, cannot be classified as parts of mobile phone.

46. To appreciate the issue involved, it would be appropriate to first examine whether the Customs Tariff and IGST Rate Notification are completely aligned because if they are not completely aligned, Note 2(a) of section XVI of the Customs Tariff would not be of any assistance while interpreting the provisions of the IGST Rate Notification.

47. To substantiate this contention, learned counsel for the manufacturers of the mobile phones have placed reliance upon Serial No. 203 of Schedule II to the IGST Rate Notification and Chapter 85 of Customs Tariff.

48. Serial No. 203 of Schedule II is reproduced below:

S. No.	Chapter/Heading/ Sub- heading/Tariff item	Description of Goods
(1)	(2)	(3)
203	85	Parts for manufacture of Telephones for cellular networks or for other wireless networks

49. Chapter 85 of the Customs Tariff reads as "Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.

50. The description appearing in column (3) to Serial No. 203 does not match with the Customs Tariff. Serial No. 203 would, therefore, have to be considered has a unique entry.

51. The fact that the IGST Rate Notification is not completely aligned to the Customs Tariff is also clear from the following entries:

Customs Tariff		IGST Rate Notification			
CTH	Description	IGST Schedule and Rate	Sl. No.	CTH	Description
0406	Cheese and Curd	Schedule I – 5%	11	0406	Chena or paneer, pre-packaged and labelled
		Schedule II – 12%	13	0406	Cheese
2103	Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard	Schedule II – 12%	44	2103	All goods, including sauces and preparations therefor, mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard, curry paste, mayonnaise and salad dressings
2809	Diphosphorus pentaoxide; phosphoric acid; polyphosphoric acids whether or not chemically defined	Schedule I – 5%	170 A	2809	Fertilizer grade phosphoric acid
2845	Isotopes other than those of Heading 2844; compounds, inorganic or organic of such isotopes whether or not chemically defined	Schedule I – 5%	171	2845	Heavy water and other nuclear fuels
0805	Citrus fruit, fresh or dried	Schedule II – 12%	16A	0805	Citrus fruit, such as oranges, mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids, grapefruit, including pomelos, lemons (citrus limon, citrus limonum) and limes (citrus aurantifolia, citrus latifolia), dried".

52. It is also important to note that Customs Tariff provides for 8 digit classification for various products which is ex-facie different from the Schedules to the IGST Rate Notification. The IGST Rate Notification covers entire Chapters of Customs Tariff, 4 digits classification and even 8 digits classification in the various Schedules. In fact, goods falling under Chapter 85 in the IGST Rate Notification itself have been classified in different

Schedules with the different descriptions when compared with Customs Tariff during the relevant period.

53. In such situation when the Customs Tariff and the IGST Rate Notification are not completely aligned, the use of the phrase 'so far as may be' in Explanation (iv) to the IGST Rate Notification assumes importance.

54. The Delhi High Court in **Sony India Pvt. Ltd. vs. Commissioner of Customs, New Delhi**⁸ examined the phrase 'so far as may be' in the context of section 27 of the Customs Act and held that it would mean that they may generally be followed to the extent possible. The observations as follows:

"14. The expression "so far as may be" in this context, under Section 27 is significant as well as instructive. The levy under Section 3(5) is conditional upon the Central Government's opinion that it is necessary to "counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article."; the rate of duty - where more than one levy exists, would be the highest of such rates and the terms of imposition of SADC would be spelt out in the notification. In this case, the regime existing before the notification of 2008 did not specify any period of limitation - and perhaps advisedly so. Some customs authorities apparently started applying Section 27, drawing inspiration from Section 3(8) which led to confusion. In Notification No. 102/2007-Cus., dated 14-9-2007 there was no period of limitation; by Circular No. 6/2008-Cus., an amending notification providing for one year period from the date of payment of the additional duty of customs was issued, through Notification No. 93/2008-Cus., dated, 1-8-2008, amending Para 2(c) of the 2007 Notification. The net effect of these was that a one year period was insisted upon for refund applications. That period

8. 2014 (304) E.L.T. 660 (Del.)

was calculable from date of payment of duty (SAD) :
Dr. Partap Singh & Anr. v. Director of Enforcement, Foreign Exchange Regulation Act & Ors., 1985 (3) SCC 72 is an authority for the proposition that the use of the phrase “so far as may be” in a later statute, with reference to provisions in an earlier statute, means that the provisions of the referred (earlier) statute are to be followed “to the extent possible”. The Supreme Court, in that case turned down the argument that the letter and content of Section 165 of the Code of Criminal Procedure was to be followed in Foreign Exchange Regulation Act proceedings, by virtue of Section 37(2) of that Act. It was held, crucially that:

“The submission that Section 165(1) has been incorporated by pen and ink in Section 37(2) has to be negative in view of the positive language employed in the section that the provisions relating to searches shall so far as may be apply to searches under Section 37(1). If Section 165(1) was to be incorporated by pen and ink as sub-section (2) of Section 37, the legislative draftsmanship will leave no room for doubt by providing that the provisions of the CrPC relating to searches shall apply to the searches directed or ordered under Section 37(1) except that the power will be exercised by the Director of Enforcement or other officer exercising his power and he will be substituted in place of the Magistrate. The provisions of sub-section (2) of Section 37 has not been cast in any such language. It merely provides that the search may be carried out according to the method prescribed in Section 165(1).”

(emphasis supplied)

55. The Supreme Court in **Pioneer Silk Mills Pvt. Ltd. vs. Union of India**⁹ also observed as follows:

“38. In Dr. Pratap Singh and Another v. Director of Enforcement, Foreign Exchange Regulation Act and Others, AIR 1985 Supreme Court 989, with reference to the expression “so far as may be”, the Supreme Court said that the expression had always

9. 1995 (80) E.L.T. 507 (Del.)

been construed to mean that those provisions may be generally followed to the extent possible and it is not that those provisions have been incorporated by pen and ink (like in Section 3(3) of the Additional Duties Act). *****”

56. Learned authorized representative appearing for the department submitted that the judgment of the Delhi High Court in **Sony India** was distinguished in **Principal Commissioner of Customs vs. Riso India Pvt. Ltd.**¹⁰ and **M.S. Metal vs. Commissioner of Customs (Preventive), Patna**¹¹.

57. A perusal of the aforesaid two judgments does not indicate that the view expressed by the Delhi High Court in **Sony India** in the context of the phrase ‘so far as may be’ has been diluted or found to be incorrect.

58. Such being the position, the rules for interpretation of the First Schedule to the Customs Tariff, including Section and Chapter Notes and the General Explanatory Notes can only be generally followed to the extent possible and it cannot be urged not that such provisions have been incorporated by pen and ink and have to be followed under all circumstances.

59. In this view of the matter, when it has been found that the Customs Tariff and the IGST Rate Notification are not completely aligned, it would not be appropriate to take the aid of Explanation (iv) to the IGST Rate Notification. The entry at Serial No. 203 of Schedule II to the IGST Rate Notification has to be interpreted on its own language.

60. Learned counsel for the manufacturers of mobile phones have placed reliance on the ruling rendered by the Authority for Advance Ruling in

10. 2016 (333) E.L.T. 33 (Del.)

11. 2017 (345) E.L.T. 113 (Tri. – Kolkata)

reference to **Epcos India Pvt. Ltd.**¹² to support the contention that lithium-ion batteries would fall under Serial No. 203 of the IGST Rate Notification. The Authority first examined under which CTI lithium-ion batteries would fall and concluded that they would fall under CTI 8517 70 90. The Authority then examined whether lithium-ion batteries are included in the description 'parts for manufacture of telephones for cellular networks or for other wireless networks'. The Authority observed that though mobile phones are classifiable under Chapter Heading 8517 and parts of mobile phones would also be classifiable under Chapter Heading 8517, but it is not necessary that a part is to be classified in the same Heading in which the main item is covered. The Authority then considered whether lithium-ion batteries used in the manufacture of mobile phones would qualify for GST under Serial No. 203 of Schedule II to the IGST Rate Notification and observed that since Serial No. 203 covers all goods falling under Chapter 85 which are parts for manufacture of telephones for cellular networks or for other wireless networks, lithium-ion batteries would be covered under Serial No. 203 of Schedule II to the IGST Rate Notification. The relevant portions of the ruling of the Authority for Advance Ruling on whether a part is to be classified in the same Heading in which the main term is covered, are reproduced below:

"4.1 The questions raised before the Authority for Advance Ruling, have been elaborated in Para 4.1 and 4.2 above. **The first aspect to be decided in the instant case is, as to under which of the chapter headings of the Customs Tariff Act, 1985. the said product "battery for mobile handsets", which is lithium-ion battery would be covered.** In the various notifications mentioned in Para 4 above, which prescribe the rates of CGST

on the goods in question, following has been provided vide an explanation :

Explanation. - For the purposes of this Schedule, -

(i)

(ii)

(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

4.2 To examine as to under which chapter heading lithium-ion battery which is used in mobile phones, is covered, "Rules for interpretation of Customs Tariff" read with Section 2 of the Customs Tariff Act, 1985, have to be considered. Rule 3 of these rules provide that where goods are, prime facie, classifiable under two or more headings, classification shall be under the heading which provides the most specific description shall be preferred to headings providing a more general description. In the instant case, lithium-ion mobile phone batteries, prima facie, appears to be covered under the two following headings.

8507	ELECTRIC ACCUMULATORS, INCLUDING SEPARATORS THEREFOR WHETHER OR NOT RECTANGULAR (INCLUDING SQUARE)
8507 60 00	- Lithium-ion
8517	TELEPHONE SETS, INCLUDING TELEPHONES FOR CELLULAR NETWORKS OR FOR OTHER WIRELESS NETWORKS: OTHER APPARATUS FOR THE TRANSMISSION OR RECEPTION OF VICE, IMAGES OR OTHER DATA,

	INCLUDING APPARATUS FOR COMMUNICATION IN A WIRED OR WIRELESS NETWORK (SUCH AS A LOCAL OR WIDE AREA NETWORK), OTHER THAN TRANSMISSION OR RECEPTION APPARATUS OF HEADING 8443, 8525, 8527 OR
8517 12	-- Telephones for cellular networks or for other wireless networks :
8517 70	- Parts :
8517 70 10	-- Populated, loaded or stuffed printed circuit boards
8517 70 90	-- Other

Out of the above two, sub-heading 8507 60 00, meant for lithium-ion battery, is more specific classification for the product under consideration and Heading 8517 70 90 is a general heading for parts of mobile phone. Hence, mobile phone batteries are covered under Chapter Heading 8507.

4.3 After this conclusion that lithium-ion battery is classifiable under Heading 8507. **The next question arises is as to whether it is included in the description "parts for manufacture of telephones for cellular networks or for other wireless networks". Mobile phones are classifiable under Heading 8517 and the parts of mobile phones are also classifiable under Chapter Heading 8517. However, it does not imply that any other goods, which are not covered by Chapter Heading 8517, would cease to be parts of mobile phones.**

4.4 For example, while considering eligibility as automobile parts, components and assemblies, for the purpose of MRP based valuation, CBEC, vide Circular No. 167/38/2008-CX.4, dated 16-12-2008, clarified that all goods which are commonly known and sold in the trade as "parts, components and assemblies' are covered by the said entry, irrespective of their classification in the Tariff. It was further clarified that the term "parts, components and assemblies' of automobiles includes items like batteries, brake assembly, tyres, tubes and flaps, IC engines, ball bearing etc. **Thus, it is established**

that it is not necessary that a part is to be classified in the same heading, in which the main item is covered.

4.5 In the case of State of Punjab v. Nokia India Pvt. Ltd. [2015 (315) E.L.T. 162 (S.C.)], the Hon'ble Apex Court ruled that part is that item without which the main item cannot be operated.

4.6 We also find force in the contentions raised by the applicant that a mobile phone cannot function, cannot be operated without a battery, whether the same is detachable/separable or not. Hence, mobile phone batteries qualify as part of mobile phone and accordingly, we answer the questions raised by the applicant, as under : ***"**

(emphasis supplied)

61. The Authority for Advance Ruling, thereafter, considered whether battery used in manufacture of mobile phones would qualify for GST at Serial No. 203 and observed:

"4.7 The next point to be decided is that whether "battery for mobile handset" can qualify for GST under S. No. 203 of Schedule II of the Notifications mentioned in Para 4 above.

SCHEDULE II-6%

Sr. No.	Chapter/Heading/Sub-heading/Tariff item	Description of Goods
202	8517	Telephones for cellular networks or for other wireless networks
203	85	Parts for manufacture of telephones for cellular networks or for other wireless networks

Sr. No. 203 covers all the goods falling under Chapter 85, which are parts for manufacture of telephones for cellular telephones for cellular networks or for other wireless networks. Battery of mobile handsets are indeed covered

under Chapter 85 and they are parts of mobile phones, as already discussed in the preceding paras. Accordingly, when they are used for manufacture of mobile phone handsets, they qualify to be covered vide S. No. 203 of schedule II. ***"**

(emphasis supplied)

62. Though, the aforesaid decision of the Authority for Advance Ruling under GST is not binding on this Tribunal, but it does give weight to the submission advanced by learned counsel for the appellant that lithium-ion batteries when used in the manufacture of mobile phones would attract IGST @ 12% under entry at Serial No. 203 of Schedule II to the IGST Rate Notification.

63. It would also be useful to refer to the two orders passed by the Commissioner (Appeals) that hold that lithium-ion batteries imported by the manufacturers of mobile phones would fall under Serial No. 203 of Schedule II to the IGST Rate Notification. Both the orders are identical and have placed reliance on the aforesaid decision of the Authority for Advance Ruling in **Epcso India**. The relevant portion of the order dated 16.01.2023, passed by to the Commissioner (Appeals) is reproduced below:

"5.4 *****

The Adjudicating Authority has distinguished this ruling on the grounds that it was in connection with domestic goods, Section Note 2(a) of Section XVI of the Customs Tariff had not been examined and it was issued prior to amendment on 26.07.2018.

5.4.1 However, I note that this distinction is not relevant. Since imported goods are subjected to same IGST rate as applicable to domestic goods and there is no distinction in law, the ruling in respect of

domestic goods applies equally to imported goods. Secondly, the Section Note 2(a) is relevant for classification and the same is not in dispute. Even in said ruling, the classification has been held under 85076000. Next, I note that even after amendment on 26.07.2018, entry 203 of Schedule II remained intact. This clearly showed that for goods of Chapter 85 which are parts for manufacture of telephone or cellular networks, the IGST rate was 12% only. Introduction of entry 376AA – “Lithium-Ion Batteries” w.e.f. 26.07.2018 in fact created two entries for this product – when they are parts for manufacture of mobile phones and when they are not so. **Thus “Lithium-Ion Batteries” when used as parts for manufacture of mobile phones will remain under entry 203 attracting 12% IGST.**

5.5 **In light of this, I note that IGST has been correctly paid @ 12% under Sr. No. 203 by the Appellant.** Thus, there is no ground for confiscation, fine and penalty also. The impugned order merits to be set aside. I must add that imposition of redemption fine when goods were not available for confiscation was also not legally correct.”

(emphasis supplied)

64. It may also be pertinent to refer to the decision of the Tribunal in **LG Electronics India Pvt. Ltd. vs. Commissioner of Cus. (I), Mumbai**¹³. LG Electronics had imported parts and accessories of mobile phones and claimed benefit of exemption under Notification dated 01.03.2002, which exempts parts, components and accessories of mobile handsets, including cellular phones falling under CTI 8529 90 90. The Tribunal observed:

“6. We have considered the submissions. We find that what has been imported by the appellant were parts and accessories of mobile phones and even though they may be classifiable as a whole under Chapter Heading 852520.17, the benefit of

13. 2006 (204) E.L.T. 450 (Tri. – Mumbai)

exemption Notification No. 320 cannot be denied as the benefit is available to parts and components of mobile hand sets falling under Chapter Heading 852990.90 or any other chapter. Thus it is available to parts and components irrespective of the fact under which chapter heading they fall.”

65. The Supreme Court in **Camlin Ltd. vs. Commissioner of Central Excise, Mumbai**¹⁴ excluded the applicability of HSN Explanatory Notes to interpret tariff in a situation where entries in HSN and tariff were not aligned. The relevant portion of the judgment of the Supreme Court is reproduced below:

“17. From the reading of the extract of Chapter Heading 32.15 of the HSN, it is evident that the scheme and entry of HSN is completely different from Indian Tariff Entry. **It is settled law that when the entries in the HSN and the said Tariff are not aligned, reliance cannot be placed upon HSN for the purpose of classification of goods under the said Tariff.**”

(emphasis supplied)

66. The aforesaid decision of the Supreme Court in **Camlin** was followed by the Tribunal in **A.B. Mauri India Pvt. Ltd. vs. Commissioner of C.Ex., Pune-II**¹⁵ and the relevant portion is reproduced below:

“8. *****

The case law cited by the learned counsel in this context is to the effect that, where Tariff classification of goods is not aligned with the HSN, no reliance can be placed on HSN Explanatory Notes in the context of classifying excisable goods under the Tariff vide *Camlin Ltd. v. CCE - 2008 (230) E.L.T. 193 (S.C.)*.”

14. 2008 (230) E.L.T. 193 (S.C.)

15. 2010 (260) E.L.T. 424 (Tri. – Mumbai)

67. Thus, when the language of the IGST Rate Notification is clear and un-ambiguous, there is no requirement to look for classification of lithium-ion batteries in the Customs Tariff.

68. It, therefore, follows that lithium-ion batteries imported for manufacture of mobile phones would fall under Serial No. 203 of Schedule II to IGST Rate Notification.

69. Learned counsel for the manufacturers of mobile phones are justified in submitting that since IGST Rate Notification is a Taxing Notification, it must be strictly interpreted and if two possible, interpretations are possible then the one which favours the tax payer should be adopted.

70. In this connection, it would be pertinent to refer to section 5(1) of the Integrated Goods and Service Tax Act, 2017¹⁶ and it is as follows:

"5. Levy and collection. – (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962)."

16. the IGST Act

71. It is under section 15(5) of the IGST Act that the IGST Rate Notification has been notified by the Central Government.

72. The Supreme Court in **Chief Commissioner of Central Goods and Service Tax & Ors. vs. M/s. Safari Retreats Private Ltd. & Ors.**¹⁷ laid down the rules for interpretation of taxing statutes and the relevant portion of the judgment is as follows:

"25. Regarding the interpretation of taxation statutes, the parties have relied on several decisions. The law laid down on this aspect is fairly well-settled. The principles governing the interpretation of the taxation statutes can be summarised as follows:

a. A taxing statute must be read as it is with no additions and no subtractions on the grounds of legislative intendment or otherwise;

b. If the language of a taxing provision is plain, the consequence of giving effect to it may lead to some absurd result is not a factor to be considered when interpreting the provisions. It is for the legislature to step in and remove the absurdity;

c. While dealing with a taxing provision, the principle of strict interpretation should be applied;

d. If two interpretations of a statutory provision are possible, the Court ordinarily would interpret the provision in favour of a taxpayer and against the revenue; ***"**

(emphasis supplied)

73. The Principal Commissioner, however, in paragraph 43 of the impugned order considered the IGST Rate Notification as an Exemption Notification and observed that the benefit of the IGST Rate Notification

17. Civil Appeal No. 2948 of 2023 decided on 03.10.2024

should be interpreted strictly and the burden to prove applicability would rest upon the tax payer and that the benefit of any ambiguity in the Notification must be interpreted in favour of the Revenue. The Principal Commissioner committed an error in assuming that the IGST Rate Notification is an Exemption Notification. The IGST Rate Notification is at rate Notification and, therefore, a Taxing Notification. It has to be strictly construed and any ambiguity has to be interpreted in favour of the tax payer and against the Revenue as was observed by the Supreme Court in **Safari Retreats**.

74. The order passed by the Principal Commissioner also holds that since the end use of the lithium-ion batteries cannot be ascertained at the stage of import, entry at Serial No. 203 of Schedule II to the IGST Rate Notification would not be applicable.

75. The Principal Commissioner committed an error in arriving at this conclusion. The Supreme Court in **BPL Display Devices Ltd. vs. Commissioner of Central Excise, Ghaziabad**¹⁸ held that the words 'for use' should be construed to mean 'intended to use'. In this view of the matter, when the entry at Serial No. 203 uses the words 'for manufacture', it would also mean 'intended for manufacture'. The relevant portion of the judgment of the Supreme Court is reproduced below:

"2. ***** We are of the view that no material distinction can be drawn between the loss on account of leakage and loss on account of damage. The words 'for use' used in similar exemption Notifications have also been construed by this Court earlier in the State of Haryana v. Dalmia Dadri Cement Ltd., 1987 (Suppl) SCC 679 to mean 'intended for use'."

18. 2004 (174) E.L.T. 5 (S.C.)

76. Learned authorized representative appearing for the department, however, placed reliance upon the decision of the Tribunal in **Tata Chemicals Ltd. vs. Commissioner of C. Ex., Meerut-II**¹⁹ to contend that the decision of the Tribunal in **BPL Display** was subsequently distinguished. The distinction that was drawn by the Tribunal in **Tata Chemicals** was based on the deeming fiction in the matter before the Tribunal and it was observed that it was different from the Explanation that was being considered by the Supreme Court in **BPL Display**.

77. Learned authorized representative appearing for the department also submitted that the judgment of the Supreme Court in **BPL Display** was distinguished by the Tribunal in **Arisht Spinning Mills vs. Commissioner of C.Ex., Chandigarh**²⁰. Paragraph 7, on which reliance has been placed, is reproduced below:

"7. The reliance placed by the learned advocate on the decision of the Hon'ble Supreme Court in the case of BPL Display Devices Ltd. is misplaced. The said decision dealt with the Notification No. 13/97-Cus. as amended by Notification No. 25/99 granting exemption to goods imported into India "for use" in the manufacture of other items specified in the said notification. The said decision relate to the interpretation of the condition "for use" as stipulated in the notification. In the said case, the goods imported were subject to end-use condition; the imported goods can be used only later on in the manufacture of the goods specified in the said notification. The present case is totally on a different footing. It involves the interpretation as to the relevant date for the purpose of allowing the benefit of credit under Rule 6(4) of Cenvat Credit Rules.
*****"

19. 2006 (201) E.L.T. 315 (Tri.-Del.)
20. 2010 (261) E.L.T. 417 (Tri.-Del.)

78. It is, therefore, not possible to accept the contention of the learned authorized representative appearing for the department that the judgment of the Supreme Court in **BPL Display** should not be followed because of the two subsequent decisions of the Tribunal.

79. The inevitable conclusion that follows from the aforesaid discussion is that lithium-ion batteries imported for manufacture of mobile phones are covered by entry at Serial No. 203 of Schedule II to IGST Rate Notification and would be subjected to IGST @ 12% from 01.04.2018 upto 31.03.2020. The manufacturers of mobile phones have discharged IGST @ 12% under Serial No. 203. The demand of short paid customs duty @ 28% by taking resort to the entry at Serial No. 139 of Schedule IV upto 26.07.2018 and thereafter @ 18% under Serial No. 376AA of Schedule III to the IGST Rate Notification is not justified.

80. In this view of the matter, neither the demand of short paid customs duty under section 28(1) of the Customs Act with interest under section 28AA of the Customs Act can be sustained nor imposition of redemption fine in lieu of confiscation or penalty under section 112(a)(ii) of the Customs Act can be sustained.

81. **Customs Appeal No. 54678 of 2023** and **Customs Appeal No. 55076 of 2023** have been filed by the department to assail the orders passed by the Commissioner (Appeals) holding that lithium-ion batteries imported for manufacture of mobile phones would fall under Serial No. 203 of Schedule II to the IGST Rate Notification.

82. In view of the aforesaid discussion, this finding recorded by the Commissioner (Appeals) does not suffer from any error.

83. In the result, Customs Appeal No's. 50727 of 2021; 50751 of 2021; 50798 of 2021; 51732 of 2021; 51769 of 2021; 51780 of 2021; 51790 of

2021; 51791 of 2021; 50027 of 2022; 50072 of 2022; 50274 of 2022; and 52188 of 2022 filed by the manufacturers of mobile phones are allowed and the impugned orders are set aside. However, Customs Appeal No's. 54678 of 2023 and 55076 of 2023 filed by the department to assail the two orders passed by the Commissioner (Appeals) are dismissed.

(Pronounced in the open Court on **23.06.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Golay, Shreya