

REGISTERED SPEED POST



**GOVERNMENT OF INDIA**  
**MINISTRY OF FINANCE**  
**DEPARTMENT OF REVENUE**  
**Office of the Principal Commissioner RA and**  
**Ex-Officio Additional Secretary to the Government of India**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No. 373/47/DBK/14-RA, 373/48/DBK/14-RA Date of Issue :- 01.07.2021  
373/49/DBK/14-RA, 373/49-A/DBK/14-RA  
373/50/DBK/14-RA, 373/69/DBK/14-RA  
373/70/DBK/14-RA, 373/71/DBK/14-RA/3229

ORDER NO. 141-148 /2021 -CUS (SZ) /ASRA/MUMBAI DATED 14.6.2021 OF  
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL  
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT,  
1962.

**Subject :** Revision Applications filed under Section 129DD of the Customs Act, 1962 against Order in Appeal No. 443-450/ 2013 CUS(B) dated 28.11.2013 passed by the Commissioner of Customs(Appeals), Bangalore.

**Applicant :** M/s Schneider Electric IT Business (P) Ltd.,  
(Formerly known as M/s American Power Conversion (I) Pvt. Ltd.), Branch No. 11, No. 15/B6, Part-I, Road No. 2, Jigani Industrial Area, Bangalore -562 106.

**Respondent :** Commissioner of Customs, Bangalore.

**ORDER**

These revision applications have been filed by M/s Schneider Electric IT Business (P) Ltd., (Formerly known as M/s American Power Conversion (I) Pvt. Ltd.), Bangalore, (hereinafter referred to as "the applicant" ) against Order in Appeal No. 443-450/ 2013 CUS(B) dated 28.11.2013 passed by the Commissioner of Customs (Appeals), Bangalore.

2.1 The brief facts of the case are that the applicant had imported UPS with defective batteries and reportedly replaced the same and filed drawback claims in terms of the provisions of Section 74 of the Customs Act, 1962. The applicant also filed a detailed worksheet along with the drawback claims which showed the description, specification, what was the defect for which repair was sought, details of repair undertaken etc. Thereafter, the applicant were issued Show Cause notices alleging that from the worksheet of repairs carried out by the applicant it was found that the applicant had replaced the batteries in the UPS units as they were faulty and mentioned the same in the repair column of the worksheet. In terms of Section 74 of the Customs Act, 1962, when the goods capable of being easily identified when imported into India and upon which any duty has been paid on importation, if exported; drawback benefit shall be admissible, as mentioned thereunder if the goods are identified to the satisfaction of the Assistant /Deputy Commissioner of Customs as the goods which were imported. The department issued show cause notices alleging that the replacement of battery in the UPS changed the nature of the goods, and therefore, they were not the same as the units that had been imported. Thus, the drawback claims of the applicant were liable for rejection on these grounds alone. After due process of law, the Deputy Commissioner of Customs (ICD), Bangalore (Adjudicating Authority) rejected the drawback claims on the grounds that changing of the batteries in the imported UPS units has changed the very nature of the goods and as the very goods imported have not been re-exported, the applicant is not entitled for drawback under Section 74 of the Customs Act, 1962. The details of the drawback claims rejected by the adjudicating authority are as under :-

Sl. No.	Amount of Drawback Claimed (in Rs.)	Goods re-exported vide Shipping Bill No. & date	Rejected by the Adjudicating Authority vide Order In Original No. & Date
1	6,60,295/-	3140365 dated 07.04.2011	186/2013 dated 16/22.03.2013
2.	4,67,356/-	2749108 dated 09.03.2011	195/2013 dated 29.03.2013/01.04.2013

3.	10,31,185/-	2995872 dated 28.03.2011	196/2013 dated 28.03.2013/01.04.2013
4.	10,96,547/-	2948953 dated 23.03.2011	190/2013 dated 25/27,03.2013
5.	11,55,322/-	2830936 dated 16.03.2011	198/2013 dated 28.03.2013/01.04.2013
6.	9,45,378/-	2749006 dated 09.03.2011	199/2013 dated 28.03.2013/01.04.2013
7.	7,68,894/-	3224800 dated 13.04.2011	197/2013 dated 28.03.2013/01.04.2013
8.	10,97,438/-	2948947 dated 24.03.2011	200/2013 dated 28.03.2013/01.04.2013

3. Being aggrieved, with the aforementioned Orders in original, the applicant filed appeals before Commissioner of Customs (Appeals), Bangalore, who vide Order in Appeal No. No. 443-450/ 2013 CUS (B) dated 28.11.2013 (impugned Order) rejected all the appeals and upheld the Orders in original, supra.

4. Being aggrieved with the aforesaid impugned Order, the applicant has filed these 8 (eight) Revision Applications mainly on the following common grounds:-

4.1 Section 74 provides for drawback in respect of goods which are imported into India on payment of duty and thereafter re-exported. The drawback which can be claimed under Section 74 is 98% of the duty paid at the time of import provided the conditions as mentioned there under are satisfied. (The relevant portion of the section is reproduced by the applicant for the ease of reference).

With regard to the first condition of identity at the time of import, it is not a disputed fact that at the time of import, the defective goods which were imported for repair were identified and the same were matched with the description, Part Number mentioned in the import documents and the goods were import after discharging the import duty liability on the same. Further with regard to the second condition also it is undisputed fact that the said imported goods were re-exported, after obtaining the clearance from the proper office and at the time of re-export, the identity of the exported goods was matched with the identity of the imported goods and it was certified by the Customs officers examining the goods that the description and the identity are tallying. Acknowledgement to this effect is clearly mentioned in the Shipping bill which was filed at the time of export. This clearly shows that even the third condition has been satisfied by them. With regard to the fourth and the last condition, the export was done well within the time prescribed by Section 74 of the Customs Act, 1962 and there is no dispute raised by the impugned order in this regard.

Once the conditions as mentioned in Section 74 of the Customs Act, 1962 are completely satisfied, they would be entitled for the drawback as claimed by them and the proposal made in the Show Cause Notice to reject the same was liable to dropped on this ground alone.

4.2 The impugned goods were imported by them for undertaking repair activity as the customer had returned the goods as defective, After examination of the imported goods it was noticed that one of the components of the product that is the battery was found to be defective and the same had to be replaced as

it cannot be repaired. For the aforementioned reason the defective battery was replaced with a new battery and the goods were exported. The relevant point to be seen in this case is that the identification of the product which was imported and the product which was ultimately exported by then never changed and the same is identifiable till the export takes place and the entire chain of documents has been submitted by them to the Customs authorities at the time of filing the drawback claim and the same were verified before clearance for export was given.

In the case of In Re: Torrent Pharmaceuticals reported in 2001 (138) E.L.T. 949 (G.O.I.) the revisionary authority held that Section 74 of the Customs Act, 1962 requires that the description of the goods as mentioned in the import documents and the export documents should remain unchanged. The proposition which was laid down by the Revisionary Authority in the above mentioned case was that if the exporter is able to establish the identity of the imported goods and match it with the exported goods, drawback on the imported goods is entitled to be granted to the exporter. In the present case, though one of the part of the imported UPS was changed by them during the course of undertaking the repair activity the same has not changed the identity of the goods.

They further place reliance on the decision of Shriram Refrigeration Industries Ltd. v. CCE, Hyderabad, reported in 1986 (26) E.L.T. 353 (T) wherein the Tribunal has held that the mere changing or repairing of parts does not amount to manufacturing.

They also placed reliance on the following decisions:-

- (a) Commissioner Of C. Ex., New Delhi-II v. Usha India Ltd. reported in 2000 (122) E.L.T. 870 (Tribunal)
- (b) Enfield India Ltd. v. CCE, Madras, reported in 1996 (88) E.L.T. 773 (T)
- (c) Commissioner of Central Excise, Meerut v. Samtel Color Ltd. reported in 2001 (135) ELT 288 (Tri.Del)
- (d) Metro Tyres Ltd., v. CCE, Chandigarh reported in 1996 (84) ELT 485

The Tribunal in the above mentioned cases, while examining the question of whether a product loses its identity if serviceable parts are replaced held that in spite of replacement activity, identity of the goods is not lost and it cannot be held that a new product emerges in the course of undertaken the said replacement activity which precisely answers the question is dispute in the present case.

4.3 The Board vide Circular No. 454/20/99-CX., dated 12-4-1999 while examining the question as to whether upgradation of computer system and addition of hard disk would amount to manufacture held that mere upgradation of the system or change in one of the component will not bring into existence new goods with a different name, character and use. [The applicant reproduced para 2 of the said Circular].

4.4 At the time of export of the goods after undertaking the repair activity, they had submitted the documentary proof establishing the identity of the exported goods and the same were tallied with the goods which were originally imported. In terms of the provisions of Section 74, the applicant who presents a claim for drawback is required to identify the exported product and establish that the description of the imported goods and the exported goods tallies with each other. In the case of IN RE : STAR WIRE (INDIA) LTD. reported in 2011 (272) E.L.T. 448 (G. O. I.), the Revision Authority held that once the exporter establishes the identity of the goods based on the import documents and the same is tallied with the export documents, the conditions prescribed under Section 74 are satisfied and the drawback claimed should be allowed to the exporter. (The applicant has reproduced para Nos. 9 & 10 of the Order). They also rely on following case laws in this regard:

- In RE: Madura Coats reported in 1993 (68) EL T 270 (G. O I.),
- In Re: Semi Conductor Complex Ltd. reported in 2012 (275) ELT 285 (G. O. I.),
- Assistant Collector of Customs vs. Hindustan Malleable & forgings Ltd. reported in 1993 (65) ELT 194 (Cal.) maintained by Hon'ble Supreme Court in U.O.I. v. Asstt. Collector reported in 1995 (75) E.L.T. A39 (S.C).

4.5 The Board Circular No. 46/2011- CUS dated 20.10.2011 (Para 3.1 is reproduced) clarifies the instructions relating to identification of goods and determination of use in terms of Section 74. The circular states that while identifying the goods in terms of Section 74 the Assistant / Deputy Commissioner has to make the identification of the exported goods based on examination and verification of various parameters including but not limited to physical properties, weight, marks and numbers, tests reports, if any, documentary evidences vis-à-vis import documents etc., for identification of goods. From the said Circular it is clear that one of the parameters for establishing the identification of the goods is based on the documents produced by the applicant. In the present case, as the Customs Department after undertaking a detail examination of the imported and the exported goods for coming to the conclusion that the description in the said documents tallies that which other it has to be connected that the Applicants for establishing the identity of the goods to the satisfaction of the Customs Department and the drawback claim is required to be sanctioned on this grounds alone. The relevant portions of the circular are reproduced below:

In the case of Collector Of Customs Vs. Jay Insulators reported in 1992 (61) ELT 506 (G.O.I.), the Revisionary Authority held that substantial compliance with Section 74 depends upon whether description of the imported goods tallies with the description of the exported goods and only.

It is submitted that they have not replaced the old imported UPS units with the new ones. They have merely replaced the faulty batteries with new ones, but the product overall has remained the same. The Customs Authorities have verified the re-exported products and the concerned documents and cleared the products.

4.6 Section 74 of the Customs Act does not provide that 'very same' goods are exported. Instead, Section 74 provides that the imported goods are easily identifiable as the goods being exports. In the instant case they have re-exported the very same UPS Units as were imported. The only change that has taken place is that faulty batteries in the UPS units have been replaced. In spite of the replacement of battery, they have identified the exported goods as those imported. As the identity of the goods is established, they are entitled to drawback. They also cited a plethora of case laws in this appeal, wherein the courts have held that mere replacement of faulty parts does not create a new or different product and in spite of change in components, they are entitled to drawback. It is submitted that they have merely replaced the defective batteries in the imported UPS Units, but the product has essentially remained the same and the identity of the goods is not lost.

4.7 The reliance placed by the Commissioner (Appeals) upon Gujarat State Fertilizers Co. Ltd. (Fibre Unit) v Union of India reported in 2009 (233) E.L. T. 187 (Guj.) are not applicable to the present case as the facts of the above cited decision is different from that of the present case. In the present case, they had imported UPS Units in order to carry out repair activity. Some of the UPS Units had faulty batteries, and the same were replaced by them. In the present case they had merely replaced a component of the UPS Units, but the basic nature and composition of the units remained the same. Further, the essential character to the product cleared is given by the UPS and the classification of the goods also is based on the classification of the UPS and not the battery. Hence, since the UPS as imported has been cleared after carrying out requisite repairs, the mere change in the battery used along with the UPS will not result in clearance of goods different from that imported. The impugned order which has failed to take into consideration this legal aspect on the essential character of the goods is therefore unsustainable liable to be set aside for this reason itself. The submission clearly differentiates the above cited judgment from the present case. In the present case, they had essentially re-exported the same unit as the ones imported, with the exception of changing a few faulty components. They have not exported UPS without battery but exported UPS with a replaced battery. Thus the goods exported by them are same as that imported and the identity of the goods is established. Furthermore, all the exported units were duly examined by the Customs Authorities before they were re-exported. In light of the above, it is humbly submitted that the facts of the case relied upon by the Commissioner (Appeals) in the impugned Order dated 28.11.2013 are distinguishable from the present factual matrix. Therefore, they cannot be denied the benefits of Section 74 of the Customs Act, 1962 based on the above cited judgment and they are also eligible to receive interest on the Drawback Amounts under Section 75A of the Customs Act, 1962 at the rate as prescribed under Section 27A of the Customs Act, 1962.

5. Personal hearing in this case was held on 17.02.2021 through video conferencing which was attended online by Ms. Anjali Hirawat, Advocate, Shri G. Krishnamoorthy, AGM (Indirect Taxation) and Shri Ashoka H.P., Manager

(Indirect Taxation) on behalf of the applicant. They informed that they have submitted a compilation of case laws on the hearing day. They submitted that after change of battery or repair of defective parts goods were exported and identity of goods has been established. In the compilation of case laws submitted, in addition to the case laws already enclosed to their Revision Applications, they also relied on following case laws :

- Rajasthan Tools Pvt. Ltd V. CCE Jaipur-1999(108)ELT 467(Tribunal),
- East India Transformers & Switch Gears (P) Ltd. V CCE - 1989(43) ELT 561 (Tribunal),
- CCE, Pune Vs Dattanand Refrigeration Services Pvt. Ltd. 2001(132)ELT 748 (Tri-Mumbai)
- Comteck Laboratories Vs CCE, Mumbai- 2003(156) ELT 966 (Tri.Mumbai).

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the Order-in-Original and impugned Order-in-Appeal. The issue involved in all these Revision Applications being same, they are taken up together and are disposed off vide this common order.

7. In the instant case the applicant had imported UPS with defective batteries and reportedly repaired the same and filed Drawback claims in terms of provisions of Section 74 of the Customs Act, 1962. Government observes that in terms of Section 74 of the Customs Act, 1962 three conditions were required to be satisfied. Those three conditions are as follows:

- (i) The imported goods should be capable of being easily identified,
- (ii) Duty of Customs should be paid on the imported goods and the same should be exported within two years from the date of payment of duty on imported goods, and
- (iii) The exported goods should be identified with the imported goods to the satisfaction of the Assistant/Deputy Commissioner of Customs.

8. Government observes the applicant in the worksheet presented along with the drawback claims stated that the defects were due to battery having become faulty and new battery had been replaced. Therefore, the department viewed that the items exported under shipping bills are not the same as the goods that have

been imported under Bill of Entry, *ibid*; that the batteries that were originally in the UPS have been replaced by new batteries; that while re-exporting, altogether a different set of UPS had been exported and hence the applicant had not exported the same set of UPS imported under the Bills of Entry in question and therefore, the drawback claims were not admissible to the applicant.

9. While rejecting the appeals filed by the applicant, the Commissioner (Appeals) observed that :-

*On scrutiny of facts on record, I find that the goods imported are UPS with defective batteries. There was no activity of repair involved in respect of those batteries. The batteries were replaced to render the UPS functional, so that the purpose of power supply could be served. In the present case, while the imported goods were UPS with defective battery, the re-exported goods were UPS with full charged/functional battery. UPS with defective battery constitutes goods different from UPS with replaced battery/ battery which are functional. UPS with defective battery cannot perform the function of power supply as the UPS with effective/replaced battery. Hence, the goods are entirely different. Mere name, viz, UPS should not create a misconception. The mere description of goods should not be the criterion for allowing drawback benefit, unless the imported goods and the re-exported goods are easily identifiable, to the satisfaction of the Assistant Commissioner. The relevant extracts of CBEC circular no. 46/2011-Cus dated 20.10.2011 are furnished as under:*

***"In terms of the section 74 of the Customs Act, 1962, the export goods are to be identified to the satisfaction of the Assistant/Deputy Commissioner of Customs. This may require examination and verification of various parameters, including but not limited to physical properties, weight, marks and numbers, test reports, if any, documentary evidences vis-a-vis import documents etc., for identification of the goods."***

*The Circular interalia emphasized examination/ verification of various parameters like physical properties, weight etc. What is of relevance in the context of Section 74 of the Act, is that of the identity of the goods and in the present case, the identity of the goods being dissimilar, the claim for drawback was correctly rejected by the DC. The replacement of battery in the imported UPS resulted in creation of a new product, whose identity is different from the original imported UPS which consisted of defective batteries. Further, without battery which are in functional condition the UPS loses its character as UPS.*

*Reliance is placed on the judgment of Hon'ble High Court of Gujarat at Ahmedabad reported in the case of Gujarat State Fertilizers Co. Ltd. Vs. UO1 2009 (2331 ELT 187 (Guj), wherein it is held that the goods imported and exported most essentially remain the very same goods, if the assessee intends to avail drawback under Section 74 of the Act. In view of the above, there is no merit in the case of the appellant.*

10. Government observes that the applicant in these cases had imported defective finished goods (UPS Systems) which were originally manufactured and



exported by them, for repair and return; vide Bills of entry on various dates. The defective imported finished goods which were initially exported more than three years ago were imported on payment of duty vide various Bills of entry and after re-exporting those defective goods the applicant claimed drawback against such duty paid Bills of entry. The repairing activities undertaken by the applicant were 1) The battery of UPS Systems was faulty, hence battery was replaced and 2) The UPS System was switched on and switched off. However, the lower authorities rejected the drawback claims of the applicant on the grounds mentioned at paras No. 8 & 9 supra.

11. From the copies of examination/verification report submitted by the Inspector and Supdt. of Customs, ICD Bangalore to the Assistant Commissioner of Customs ICD, Bangalore, Government observes that the goods (UPS Systems) which were originally imported vide various Bills of entry were re-exported and both the Inspector & Supdt. of Customs, ICD Bangalore verified the Marks and Nos. of each such System re-exported and established the identity of these goods with those imported for repairs. The examination/verification report is reproduced below for better appreciation of the matter in hand.

Shipping Bill No & Date	Examination Report
3140865 dated 07.04.2011	Verified the Marks & Nos and found to contain 1. APC Smart-ups RT 3000VA 220V SURT3000XLTW-68 Nos. 2. APC Smart-UPS RT 8000VA 220V SURT8000XLTW - 24 Nos. 3. APC Smart-UPS RT-5000VA 220V SURT5000XLTW-23 Nos as per Export Invoice No. BRC/10-11/009 DT. 06.04.2011  And also verified the Import Documents. The goods were originally imported vide Bill of Entry Nos. 1) 2277799/23.10.2010 Import invoice No.57057303-2684638 dated 16.12.2009 2) 223689/ 20.02.2010 Import invoice No.57057303-2684638 dated 16.12.2009 3) 2277801/23.10.2010 Import invoice No.57057303-2684638 dated 16.12.2009 established the identity of goods.
2749108 dated 09.03.2011	Verified the Marks & Nos and found to contain 1. APC Smart-ups RT 8000VA 230V SURT8000XLI 2. APC Smart-UPS RT 8000VA 230V SURT8000XLI as per Export Invoice No. BRC/10-11/002 DT. 08.03.2011  Also verified the Import Documents. The goods were originally imported vide Bill of Entry Nos. 225605/18.03.2010 Import invoice No.80084580/ 56896589/ 21.12.2009. Established the identity of goods.
2995872 dated 28.03.2011	Verified the Marks & Nos and found to contain 1. APC Smart-Ups RT 3000VA 208V SURTD3000XLT-50 Nos 2. APC Smart-Ups RT 5000VA 208V SURTD5000XLT-102 Nos as per the Export Invoice No.BRC/10-11/006.dtd 25.03.2011.  And also verified the Import Documents. The goods were originally imported vide Bill of Entry Nos: 1)2165129/04.09.2010 Import Invoice No.58049513-80086930 dtd. 10.03.2010 2) 225606/ 18.03.2010 & 57211006-80084579 / 08.01.2010 3) 2165109/04.09.2010 Import Invoice No.58040175-80086930 dtd. 03.04.2010. Established the identity of the goods.

<p>2948953 dated 23.03.2011</p>	<p>Verified the Marks &amp; Nos and found to contain 1. APC Smart-Ups RT 3000VA 208V SURTD3000XLT-168 Nos as per the Export Invoice No.BRC/10-11/005.dtd 23.03.2011.</p> <p>And also verified the Import Documents. The goods were originally imported vide Bill of Entry Nos: 1)2165129/04.09.2010/Import Invoice No.58049513-80086930 dtd. 10.03.2010 2) 225606/ 18.03.201084 57211006-80084579 / 08.01.2010. Established the identity of the goods.</p>
<p>2830936 dated 16.03.2011</p>	<p>Verified the Marks &amp; Nos and found to contain 1. APC Smart-Ups RT 8000VA 220V SURT8000XLTW as per the Export Invoice No.BRC/10-11/003.dtd 10.03.2011.</p> <p>And also verified the Import Documents. The goods were originally imported vide Bill of Entry Nos: 1)2277801/23.10.2010 Import Invoice No.57057303-2684638C dtd. 16.12.2009 2)2277799/23,10.2010 57057303-2684638B/16.12.2009. Established the identity of the goods.</p>
<p>2749006 dated 09.03.2011</p>	<p>Verified the Marks &amp; Nos and found to contain 1. APC Smart-Ups RT 8000VA 230V SURT8000XLI 2. APC Smart-UPS RT 8000VA 230V SURT8000XLI as per Export Invoice No. BRC/10-11/001 DT. 05.03.2011</p> <p>And also verified the Import Documents. The goods were originally imported vide Bill of Entry Nos: 1) 225606/ 18.03.201084 Import invoice No.80084580/ 56896589/ 21.12.2009. established the identity of goods.</p>
<p>3224800 dated 13.04.2011</p>	<p>Verified the Marks &amp; Nos and found to contain 1. APC Smart-Ups RT 8000VA 220V SURT8000XLTW as per the Export Invoice No.BRC/10-11/007.dtd 28.03.2011.</p> <p>And also verified the Import Documents. The goods were originally imported vide Bill of Entry Nos: 1)2165129/04.09.2010/Import Invoice No.58049513-80086930 dtd. 10.03.2010 2) 225606/ 18.03.2010 Import Invoice No. 57211006-80084579 / 08.01.2010 3) 2165109/04.09.2010 Import Invoice No.58040175-80086930 dtd. 03.04.2010. established the identity of the goods.</p>
<p>2948947 dated 24.03.2011</p>	<p>Verified the Marks &amp; Nos and found to contain 1. APC Smart-Ups RT 3000VA 208V SURTD3000XLT-168 Nos as per the Export Invoice No.BRC/10-11/004.dtd 22.03.2011.</p> <p>And also verified the Import Documents. The goods were originally imported vide Bill of Entry Nos: 1) 225606/ 18.03.2010 Import Invoice No. 57211006-80084579 / 08.01.2010 2) 2165129/04.09.2010 Import Invoice No.58049513-80086930 dtd. 10.03.2010 &amp; established the identity of the goods.</p>

From the aforesaid examination/verification report it can be concluded that the UPS systems imported vide various Bills of entry for repair and return and those which have been duly re-exported by the applicant are the same.

12. Government also observes while deciding the valuation issue of UPS Systems, the various courts have held that a Battery is an essential part of the Uninterrupted Power Supply (UPS) System and gives it an "uninterrupted" character. In Kerala State Electronics Dev. Corp. Ltd. v. Collector of Central Excise, Cochin [1994 (71) E.L.T. 508], Hon'ble Tribunal held that the value of battery was includible in the assessable value of the 'uninterrupted power supply' as the existence of the uninterrupted factor is possible only because of the battery part of the system making the battery an essential part of the system. This decision was also relied upon in the case of Commissioner of

Central Excise v. Electronics and Controls [1998 (27) RLT 816 (CEGAT)] holding that UPS can function without battery for mere conditioning of power but to provide uninterrupted power supply, battery is essential pre-requisite.

13. The Income Tax Appellate Tribunal, Delhi Bench in M/s Adtel Software Pvt. Ltd, Noida Vs ITO Ward 1(2), New Delhi while deciding the issue whether the expenditure incurred towards cost of replaced batteries for UPS installed in the office of the assessee be treated as capital expenditure or a revenue expenditure observed as under :-

*5. We have carefully considered the rival submissions in the light of material placed before us. Though batteries are integral part of the UPS but without proper batteries the UPS will not function. The life of the batteries is limited and for proper functioning of UPS, the batteries need to be replaced. The expenditure incurred on batteries for proper running of an instrument cannot be held to be capital expenditure as it does not bring any new asset in existence but it put the instrument, in which the batteries are used, to function properly. Therefore, we are of the opinion that ld. CIT(A) has wrongly held that batteries which are to be replaced constitute capital expenditure. We set aside his findings and we hold that the expenditure incurred by the assessee on batteries is revenue expenditure and has to be allowed as such. The disallowance is deleted.*

14. Government is of the opinion that the issue raised in the present Revision Applications is also covered by the above Order though rendered in the context of the provisions contained in the Income Tax Act. As the replacement of battery does not bring *any new asset in existence*, as is held by the Income Tax Appellate Tribunal, Delhi Bench, it dismisses the theory of Commissioner (Appeals) that the replacement of battery in the imported UPS resulted in creation of a new product, whose identity is different from the original imported UPS which consisted of defective batteries. Moreover, reliance placed by the Commissioner (Appeals) upon Gujarat State Fertilizers Co. Ltd. (Fibre Unit) v Union of India reported in 2009 (233) E.L. T. 187 (Guj.) is also out of place as in that case the goods imported were extruder screws with motor complete as mentioned in their import invoice whereas the goods re-exported were extruder screws without motor.

15. Following the ratio of the aforesaid orders/judgments, Government holds that the UPS cannot function as a UPS unless the battery is attached. When a UPS is supplied with built-in batteries so that supply of the battery is

inseparable from supply of the UPS, it should be treated as an integral part of UPS. The applicant initially exported UPS Systems consisting of batteries and imported them for repair and return, and subsequently re-exported these UPS Systems with full charged/functional batteries, as is evident from the examination/verification report discussed at para 11 supra. Hence, in the process of replacement of Battery, the main product is a UPS System to start with, has remained a UPS System even after such replacement in all these cases and no new distinct product having a different identity or name has come into existence as held by Commissioner (Appeals) in his impugned Order.

17. In view of the foregoing discussion, Government modifies and sets aside Order in Appeal No. 443-450/ 2013 CUS(B) dated 28.11.2013 passed by the Commissioner of Customs(Appeals), Bangalore.

18. The revision applications are allowed with consequential benefits.

*Shrawan*  
*14/6/21*  
( SHRAWAN KUMAR )

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. *141-148* /2021-CX (SZ) /ASRA/Mumbai DATED *14.6.2021*

To,

M/s Schneider Electric IT Business (P) Ltd.,  
(Formerly known as M/s American Power Conversion (I) Pvt.Ltd.),  
Branch No. 11, No. 15/B6, Part-I, Road No. 2,  
Jigani Industrial Area, Bangalore -562 106.

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3. Sr. P.S. to AS (RA), Mumbai.
- ~~4. Guard file.~~
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