

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

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL No. 50356 of 2025

(Arising out of Order-in-Appeal No. D-I/ACCI/NCH/1342/2024-25 dated 25.09.2024 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi)

Criticallog India Private Limited,
No. 18, Amman Koil Street,
Madipakkam Main Road,
Chennai- 600 091

....Appellant

Versus

The Commissioner of Customs,
New Customs House, Near IGI Airport,
New Delhi- 110037

....Respondent

APPEARANCE:

Ms. V. Pramila, advocate for the appellant

Shri Rakesh Kumar, authorised representative of the department

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

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

Date of Hearing : 21.08.2025

Date of Decision : 18.02.2026

FINAL ORDER NO. 50277/2026

JUSTICE DILIP GUPTA:

Criticallog India Private Limited¹ has filed this appeal against the order dated 25.09.2024 passed by the Commissioner of Customs (Appeals)². This order disposes of the appeal filed by the appellant against the order dated 24.05.2024 passed by the Deputy Commissioner of Customs.

2. The Commissioner (Appeals) has partly allowed the appeal filed by the appellant and the operative part of the order is reproduced below:

"Order

6. In view of the above discussion and findings, I partly allow the appeal and modify the impugned to the extent of following:-

-
1. **the appellant**
 2. **the Commissioner Appeals**

(i) Reduction of the Redemption Fine from Rs. 3,00,000/- to Rs. 2,17,980/- (10% of value of goods in Table D of OIO) under Section 125 of the Customs Act, 1962.

(ii) that goods mentioned at Sr. No. 6 and 7 of Table-E of the OIO are not liable to absolute confiscation and thus allowed to be released without imposition of penalty.

(iii) that goods mentioned at Sr. No. 4 of Table-E of the OIO are liable to absolute confiscation alongwith penalty of Rs. 837.50/- under Section 112(a)(i) of the Customs Act, 1962.”

3. The appellant is a technology powered logistics company providing end-to-end logistics solutions to various customers globally. The appellant imports spares for warranty replacement under delivered duty paid items. It imports the warranty parts only for specified dedicated end customers. The imported items are controlled by the US Government and authorised for export only to the country of ultimate destination for use by the ultimate consignee and end users identified by the exporters - suppliers.

4. According to the appellant, the imported goods are exclusively imported for 'replacement' purposes to the ultimate identified customers. Thus, the imported goods cannot be sold/resold, transferred or disposed of to any other country or to any other person other than the authorised ultimate consignee.

5. During the course of business, the appellant filed a Bill of Entry dated 08.03.2024 for clearance of goods declared as 'Memory' and 'Power Supply' under the cover of invoice dated 23.01.2024 for a declared value of US\$ 5140. The goods were supplied/exported by MEMPHIS-SSL-EXAGRID USA. The imported 'Memory' was classified

by the appellant under Customs Tariff Item³ 8542 32 00 and 'Power Supply' under CTI 8504 40 90 of the Customs Tariff Act.

6. The officers of the department, however, raised certain queries relating to the import of excess quantity of goods than declared.

7. The appellant appointed a Chartered Engineer for survey/ inspection of the goods to show that the goods imported were as per the declaration. The report of the Chartered Engineer along with the catalogue was submitted by the appellant on 18.04.2024.

8. The Bill of Entry had been self-assessed by the appellant in the following manner:

Table-A

Sl. No./Item No. as per BOE	Declared CTH	Description of the Goods	Quantity in NOS	Unit Assessable Value (in USD)	AV IN USD	Declared Rate of Duty @ BCD
1	85423200	002-0193-00 MEMORY	1	100	100	0%
2	85423200	002-0194-00 MEMORY	1	200	200	0%
3	85423200	002-0226-00 MEMORY	1	50	50	0%
4	85044040	002-0229-00 POWER SUPPLY	2	100	200	20%
5	85423200	002-0235-00 MEMORY	2	250	500	0%
6	85044090	002-0241-00 KIT, CRU, SMC, POWER SUPPLY, 1280W	2	100	200	20%
7	85044090	002-0242-00 KIT, CRU, SMC, POWER SUPPLY SMC-1	2	207	414	20%
8	85423200	002-0253-00 MEMORY	1	366	366	0%
9	85423200	002-0254-00 MEMORY	1	394	394	0%

3. CTI

10	85423200	002-0255-00 MEMORY	2	788	1576	0%
11	85044040	002-0391-00 POWER SUPPLY	3	180	540	20%
12	85044040	002-0392-00 POWER SUPPLY	3	200	600	20%

9. The Deputy Commissioner found that in terms of the report submitted by the Chartered Engineer, the appellant had mis-declared the quantity of 'Memory' as there were 59 items instead of 21 declared by the appellant. The Deputy Commissioner also found that the correct classification of 'Memory' was under CTI 8479 90 00 attracting basic customs duty @ 0% and IGST @18% instead of what was declared by the appellant, though, there was no variation in the rate of basic customs duty and IGST. The Deputy Commissioner also found that as these goods were mis-declared in terms of quantity, value and description they would be liable to confiscation under section 111(m) of the Customs Act.

10. In respect of 'Power Supply' which are at serial numbers 4, 6, 7, 11 and 12 of the aforesaid chart, the Deputy Commissioner found that for three items mentioned at serial numbers 4, 6 and 7 of the aforesaid chart, the importer was not in possession of a valid BIS certificate and the validity of the license had also expired on 30.03.2023. In respect of these three items, the Deputy Commissioner found that they were liable for absolute confiscation under section 111(d) of the Customs Act 1962⁴ as the goods became prohibited due to non availability of BIS license.

11. The Deputy Commissioner also found that the appellant was liable for penal action under section 112(a)(i) of the Customs Act.

4. the Customs Act

12. Accordingly, the following order was passed by the Deputy Commissioner:

“ORDER

6. I reject the value of the goods as declared by the importer under Rule-12 of CVR-2007 and reassess the goods in terms of CTH and value of the goods as mentioned in Table-D supra, under Rule-9 of CVR-2007 read along with Section 14 of the Customs Act, 1962.

6.1 I confirm the duty demand of Rs. 3,13,372/- (Rupees Three Lakhs Thirteen Thousand and Three Hundred Seventy Two only) under Section 28(8) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

6.2 I order the confiscation of the goods mentioned under Table-D supra, under Section 111 (1) and (m) of the Customs Act, 1962, However, I give an option to the importer to redeem the goods on the payment of fine of Rs. 3,00,000/- (Rupees Three Lakh Only) under Section 125 of the Customs Act, 1962.

6.2 I impose the penalty of Rs.3,13,372/- (Rupees Three Lakh Thirteen Thousand Three Hundred and Seventy Two Only) on the importer under Section 114A of the Customs Act, 1962.

6.3 I order the absolute confiscation of the goods mentioned under Table-E supra, under Section 111 (d) of the Customs Act, 1962 and impose a penalty of Rs. 68,172/-(Rupees Sixty Eight Thousand One Hundred and Seventy Two Only) under Section 112(a)(i) of the Customs Act, 1962.”

13. It is against this order of the Deputy Commissioner that the appellant filed an appeal before the Commissioner (Appeals). As noted above, the appeal was partly allowed. The redemption fine for the goods declared as 'Memory' was reduced to Rs. 2,17,980/-. In respect of 'Power Supply' mentioned at serial numbers 6 and 7, it was found that the appellant had a valid license and, therefore, they were not prohibited goods. They were, therefore, not held liable for

confiscation and the said goods were released. However, one 'Power Supply' at serial number 4 was held liable to confiscation and penalty of Rs 837.50/- was imposed.

14. Ms. V. Pramila, learned counsel for the appellant made the following submissions:

(i) The Chartered Engineer had erroneously counted the number of 'Memory' pieces without realizing that 2/8 pieces formed one component, and to explain this, the appellant had produced the explanatory letter submitted by the supplier along with the pictures of imported 'Memory' which showed that the number of pieces depicted in each picture was required to be accounted as one component. It is this erroneous calculation of pieces that led to the increase of the quantity and consequent charge leading to mis-declaration;

(ii) Regarding misclassification, the learned counsel for the appellant submitted that there is no change in the rate of duty and it remains neutral. Thus, the charge of mis-declaration does not have any meaning and impact on the revenue; and

(iii) Regarding absolute confiscation of one 'Power Supply' item on the ground that it was prohibited as the appellant failed to produce the necessary BIS license, learned counsel submitted that there was no necessity of providing the BIS license in respect of spare parts.

15. Shri Rakesh Kumar, learned authorised representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal. In this connection, the learned authorised representative submitted that:

(i) The importer had earlier admitted valuation mistake in respect of 'Memory' and, therefore, the letter submitted by the supplier is unreliable;

(ii) Mis-declaration is punishable even if it is duty neutral as even an attempt to evade is material; and

(iii) The appellant failed to prove that the goods were spares and not covered under compulsory registration order. The appellate authority had verified that BIS license had expired and hence, confiscation is justified.

16. The submissions advanced by the learned counsel for the appellant and the learned authorised representative appearing for the department have been considered.

17. The dispute in the present appeal relates to 'Memory' and 'Power Supply' imported by the appellant through a Bill of Entry dated 08.03.2024. A perusal of the Bill of Entry shows that it consists of 12 items out of which 7 relate to 'Memory' and 5 relate to 'Power Supply'. Each of these two will be discussed separately.

Memory

18. The allegation against the appellant is that there is a mis-declaration in the quantity of goods imported, as against the import of 59 items the appellant mentioned only 21 items.

19. The following chart will show the reason why the department has alleged that there were 59 items imported by the appellant.

S.No.	Part No.	Make/COO	Qty in Sets	Qty in Sets as per Chartered Engineer
1	002-0193-00	Innodisk/Taiwan	1	1
2	002-0194-00	Innodisk/Taiwan	1	2
3	002-0226-00	Innodisk/Taiwan	1	4
4	002-0229-00	SuperMicro/ USA	2	2
5	002-0238-00	Innodisk/Taiwan	2	16
6	002-0241-00	SuperMicro/ China	2	2
7	002-0242-00	SuperMicro/China	2	2

8	002-0253-00	Innodisk/Taiwan	1	4
9	002-0254-00	Innodisk/Taiwan	1	4
10	002-0255-00	Innodisk/Taiwan	2	16
11	002-0391-00	AcBEL/ China	3	3
12	002-0392-00	AcBEL/ China	3	3

20. It would be seen from the aforesaid Chart that against serial number 2, only one item has been shown by the appellant whereas the department alleges that there are two items. In respect of item at serial number 3, the department alleges that there are four items instead of one item as declared by the appellant. In respect of serial number 5, the department alleges that there are 16 items instead of 2 items, as declared by the appellant. In respect of serial numbers 8 and 9, the department alleges that there are 4 items instead of 1 item declared by the appellant. In respect of serial number 10, the department alleges that there are 16 items instead of 2 items declared by the appellant.

21. The appellant in the reply had contended that there was a calculation error on the part of the Chartered Engineer in calculating the number of items and this is sought to be explained by stating that the Chartered Engineer had erroneously counted number of pieces without realising that certain number of pieces form only one component. This has been explained by the appellant from the communication sent by the global logistics manager of EXAGRID which is reproduced below:

" EXAGRID

We are addressing the issue of valuation/overshipment concerns of Choice ticket ZAA605R7.

Parts listed below currently reflect a quantity issue, however, their component pieces were counted as separate parts, and added value incorrectly. The correct quantities on the initial

invoice are correct. Example the costs listed on the commercial invoice for 1 box with 4 memory components is correct for the full combined costs of all 4 components.

The parts are our memory modules. They are packed in one box, however the parts are comprised of multiple memory sticks. Photo examples are attached and should be counted as one part. This is the same for all parts listed below

ExaGrid PN	Manufacturer	Manufacturer PN	Memory Capacity	Memory Modules Per Part	Total Capacity
002-0193-00	Innodisk	M3CO-8GSS3LQE-B756	8GB	1 component per one part	8GB Total
002-0194-00	Innodisk	M3CO-8GSS3LQE-B756	8GB each	2 components per one part	16GB Total
002-0226-00	Innodisk	M4RO-AGS1BCIK-B756	16GB each	4 components per one part	64GB Total
002-0238-00	Innodisk	M4RO-AGS1BCIK-B756	16GB each	8 components per one part	128GB Total
002-0253-00	Innodisk	M4CO-AGS2LCEM-B756	16GB each	4 components per one part	64GB Total
002-0254-00	Innodisk	M4RO-AGS2ACEM-B756	16GB each	4 components per one part	16GB Total
002-0255-00	Innodisk	M4RO-AGS2ACEM-B756	16GB each	8 components per one part	128GB Total

Photo Examples for each part are on additional pages.”

22. The aforesaid communication clearly explains that for item at serial number 2, two components form one part, for item at serial numbers 3, 5 and 6, four components form one part, and for item at serial numbers 4 and 7, eight components form one part. The pictures enclosed with the communication also clearly show how various components form one part. The Deputy Commissioner has only gone by the report submitted by the Chartered Engineer. The Commissioner (Appeals) has rejected the explanation offered by the appellant for the reason that the appellant had agreed for quantification and valuation which was done by the Chartered Engineer before the Deputy Commissioner and the communication sent by the exporting company with pictures did not offer any explanation regarding change of the earlier version.

23. It was obligatory on the part of the Commissioner (Appeals) to have examined the explanation offered by the appellant regarding the quantification of the 'Memory' imported by the appellant. This explanation was supported by the letter from the logistics manager of EXAGRID with photographs. The only reason assigned by the Commissioner (Appeals) for not accepting the explanation offered by the appellant is that, before the Deputy Commissioner the appellant had accepted the report of the Chartered Engineer. It was open to the appellant to question the report of the Chartered Engineer regarding quantification of the 'Memory' imported by the appellant on the basis of the communication sent by the supplier. The said communication clearly shows how errors had crept in and if the errors are accepted then there would be no difference in the quantity of 'Memory' imported by the appellant. The Commissioner (Appeals) failed to examine this issue and, therefore, committed an error in holding that there was a misdeclaration regarding the quantity of goods imported by the appellant.

24. Thus, the order passed by the Commissioner (Appeals) upholding the order passed by the Deputy Commissioner, rejecting the value of the 'Memory' imported by the appellant and confirming the demand of duty with interest deserves to be set aside. The confiscation of goods with option to pay redemption fine is also set aside.

Power Supply

25. The next issue that arises for consideration is with regard to 'Power Supply'. It is only with regard to one 'Power Supply' at serial number 4, that the Commissioner (Appeals) has held that it is liable to absolute confiscation with penalty of Rs. 837.50/- under section 112 (a)(i) of the Customs Act. This is for the reason that the

contention of the appellant that the 'Power Supply' imported by the appellant was 'spares' for warranty replacement and did not require BIS licence, was rejected since under serial number 47 of FAQ, UPS/inverters are covered under Electronics and IT Goods (Requirement For Compulsory Registration) Order, 2012.

26. It is seen that the appellant had relied upon serial no. 35 of the FAQ issued by the Ministry of Electronics and Information Technology which is as follows:

"35. Will the Compulsory Registration Order apply to spare parts of the notified products? Will the order apply to an item used as a replacement of a faulty unit?"

Ans- The Compulsory Registration Order applies to finished goods and not the spare parts/components used in the manufacturing of the finished goods, unless they are notified separately as independent products under CRO. Further, the import of the notified items in CKD (complete knock down) condition is allowed. However, for the import of notified goods, in SKD (semi knock down) condition, the import should be allowed only to the manufacturer of the end finished product which are having IEM license for manufacturing the same. If the products are imported in SKD condition, the customs shall ensure that the importer has valid authorization from the brand owner for assembling/manufacturing the end product."

27. Serial no. 47 of the FAQ is as follows:

"47. Will UPS/ Inverter only include standalone units or Electronics and IT Goods (Requirement for Compulsory Registration) Order, 2012 will also cover UPS/ Inverter units that are installed in a host system? Will such components also require registration?"

Ans- Only standalone UPS/ Inverters are covered under Electronics and IT Goods (Requirement for Compulsory Registration) Order, 2012."

28. It is seen that serial no. 47 is for standalone UPS/inverters and not for spares which is covered by serial no. 35. Thus, there is no registration required for spares.

29. The Commissioner (Appeals), therefore, committed an error in ordering for confiscation of one 'Power Supply' with penalty of Rs. 837.50/- under section 112 (a)(i) of the Customs Act.

30. The aforesaid discussion would lead to the inevitable conclusion that the order passed by the Commissioner (Appeals), except to the extent that the two 'Power Supplies' imported by the appellant are not liable to absolute confiscation and have to be released without imposition of penalty, is set aside and the appeal is allowed.

(Order pronounced on **18.02.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Apoorva & Kritika