Commissioner of Central Excise Vs. Cosmos Decorative Equipments

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-02-2003

Judge : S T Gowri, G Srinivasan

Appellant : Commissioner of Central Excise

Respondent : Cosmos Decorative Equipments

Judgement :

1. The question for consideration in this appeal is the classification of plastic and aluminium grills, diffusers and dampers manufactured by Cosmos Decorative Equipment, the respondent to this appeal.

2. In the order impugned in this appeal, the Commissioner (Appeals) has set aside the order of the Asst. Commissioner that these goods were to be classified in heading 8415.00 of the Central Excise Tariff as parts of air conditioning machine and hence not entitled to the exemption contained in notification 1/92.

3. In his order, the Commissioner accepted the submission of the assessee that the goods have multiple uses and some of them are clearly not for air conditioning machine or equipment. He cites the example of grill, which may extend in length to 200 feet therefore cannot be used for an air conditioning system. He has classified these goods in accordance with the material from which they were made, iron and steel, plastic or aluminium. The appeal questions this classification and for the extension of the exemption of notification on the ground that the Board's Circular dated 2.5.95 and 4.7.97 said that the grills of the goods,which are nothing but "an

extension to air conditioning system" would be classified as parts of such machine under 84.15.

4. Clause (b) of the proviso under Section 37B of the Act provides that no order instruction or direction shall be issued under that section so as to interfere with the discretion of the Commissioner (Appeals) in exercise of his appellate function. The Commissioner (Appeals) is therefore not required to follow the Board circular. Note 2(B) to Section XVI of the Tariff, which includes Chapter 85, provides that heading 8415 itself does not specifically include in its parts of air conditioning machine specified therein. Classification of these parts will have to be determined by the relevant provision of tariff.

5. Neither the order of the adjudicating authority nor the order of the appellate authority indicate sufficient details for us to determine the classification. We have therefore no option but to remand the case to the Commissioner (Appeals) to pass a reasoned order keeping in mind our observations in the classification. We clarify that either side is at liberty to produce evidence in support.