

Collector of C. Ex. Vs. Subros Ltd.

Collector of C. Ex. Vs. Subros Ltd.

SooperKanoon Citation : sooperkanoon.com/5001

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-07-1989

Reported in : (1989)(24)LC219Tri(Delhi)

Appellant : Collector of C. Ex.

Respondent : Subros Ltd.

Judgement :

1.The Collector of Central Excise, Meerut, has filed six appeals being aggrieved from a consolidated order passed by the Collector of Central Excise (Appeals) disposing of three appeals. The Collector of Central Excise had filed originally one appeal which is being registered with the Registry as appeal No. E/216/88-B. The said appeal was received in the Registry on 2nd February, 1988. Thereafter, five more supplementary appeals were filed with a covering letter which were received in the Registry on 30th March, 1988. In the covering letter the appellant has mentioned the details of the orders against which five supplementary appeals have been filed. The same are reproduced below :- "(1) Order-in-Original C.No.V(17)VC/9019/475/86/2589 dated 3-6-1987 modifying C/L No. 161/R-III/Noida/87 dated nil effective 8-5-1987.

(2) Order-in-Original C.No.V(30)171-Misc/Subros/87/4122-26 dated 18-8-1987 confirming the demand of Rs. 94,46,804.51 for the period September, 1986 to May, 1987.

(3) Order-in-Original C.No.V(30)171-Misc/Subros/87/4118-21 dated 18-8- 1987 modifying the C/L No. 207/86 effective 22-6-1988.

Vide Order Nos. 322 to 327/88-B1 dated 19-7-1988 the Bench had condoned the delay in the filing of the supplementary appeals. Since the above captioned appeals emerge from a consolidated order passed by the Collector of Central Excise (Appeals), the same are disposed of by this consolidated order.

2. Briefly the facts of the case are that M/s. Subros Ltd., C-51, Phase II, NOIDA (U.P.) had filed two classification lists No. 103 and 207 both effective from 22nd June, 1986. In the classification list No. 103 the relevant items were gas compressors for air-conditioning system in car and light commercial vehicles and air-conditioning parts and accessories for car/light commercial vehicles. The classification of the first item viz. gas compressor was approved under sub-heading 8414.10 and that of the second item viz. air-conditioning parts and accessories was under sub-heading 8415. The rate of duty for the first item was Rs. 4000.00 in terms of Serial No. 1 of the table to the Notification No. 166/86, dated 1-3-1986. The rate of duty approved for the second item was 40% ad valorem in terms of Serial No. 6 of the Notification No. 166/86, dated 1st March, 1986, as referred to above.

In the second classification list No. 207, the items were the same.

However, against the first item viz. gas compressor description given was gas compressor for air-conditioning kit for cars and light commercial vehicles of capacity not exceeding 1.5 tonnes. There was no change in the description of the second item. The classification of both the items was approved respectively under sub-headings 8414.10 and 8415.00 and the rate of duty was the same as in the case of classification list No. 103.

3. Thereafter, the Assistant Collector filed an application under Section 35-E (4) against the approval of the classification list which was treated as an appeal by the Collector of Central Excise (Appeals) and subsequently another classification list No. 161/R-III/Noida/87 was filed. In this classification list there were two items which were submitted for the approval of the classification. The first item was the

automotive gas compressor with magnetic clutch '80 cc capacity, and the second item was parts and accessories of air-conditioner for cars and light commercial vehicles. The Asstt. Collector classified the first item viz. automotive gas compressor with magnetic clutch under sub-heading 8415.00. The classification list was effective from 8-5-1987. The rate of duty quoted by the respondent was Rs. 2500.00 per piece in terms of Notification No. 135/87-C.E., dated 8-5-1987, which was raised to Rs. 8000.00 per piece. The remarks given on the classification list were "classification modified" in terms of Rule 173B(5) under subheading 8415.00 attracting duty at the rate of Rs. 8000.00 per piece taking both the products as air-conditioners under Notification No. 166/86 dated 1-3-1986 as amended. The learned Asstt.

Collector had based his order on Rule 2(a) of the Rules of Interpretation of Central Excise Tariff, 1985 and Note 4 to Section XVI of the Central Excise Tariff Act, 1985 and by giving reference to Rule 2(a) of the Rules of Interpretation, conclusion was drawn that the respondent's products had the essential character of air-conditioners.

Two conclusions had been drawn by the Asstt. Collector by reading of Rule 2(a) of Rules of Interpretation. One was that incomplete and unfinished articles were to be treated as complete and finished articles. Secondly, unassembled or disassembled articles must be classified as if they were assembled. The Asstt. Collector had also elaborated the concept of "essential character". The relevant observation in this context is "Essential Character" does not mean that the article though incomplete/unfinished should have reached the stage when it can function as a finished and complete article because the rule does not anywhere state anything about the article being ready to perform any specific function. For an article to have achieved the essential character as stated in this rule, it would suffice if the article in incomplete/unfinished condition has got the character identifying the article and is at the stage from where it cannot, in any manner be converted into any article other than the one the essential character of which it has assumed. The respondent had imported automotive air-conditioners kits in CKD condition and after assembly of various components viz. compressor with clutch, cooling unit etc. automotive air-conditioning kit in unassembled/incomplete form

was cleared to M/s. Maruti Udyog Limited for installation as automotive air-conditioners in Maruti cars. The Assistant Collector had taken note of the fact that if the import was not of CKD air-conditioning kits and only of parts, while some other components were indigenously procured and had held that after manufacture of assembled like compressor with clutch and cooling unit etc. the articles were cleared which constituted an automotive air-conditioning kit. The conclusion drawn by the Asstt. Collector was that this one set of automotive gas compressor with magnetic clutch and corresponding parts, viz. parts and accessories of automotive compressors taken together though in an incomplete unassembled condition would function as an automotive air-conditioner and would constitute automotive air-conditioning kit. It was, therefore, held classifiable under sub-heading 8415.00 of the Central Excise Tariff and liable to pay duty at the rate of Rs. 8000.00 per set in terms of Serial No. 3(a) of Notification No. 166/86.

The Asstt. Collector had also issued two show cause notices dated 23-4-1987 seeking to modify the approval order on the classification list No. 207/86 and in the second show cause notice demand was raised for the differential duty for the period September, 1986 to March, 1987. The show cause notice dated 23-4-1987 seeking to modify the earlier approved classification list No. 207/86 had been decided by the Assistant Collector, Noida, in which the basic argument taken by the Asstt. Collector in his order dated 2-6-1987 while approving the classification list No. 161 had been reiterated. The classification list No. 207/86 had been accordingly modified by changing the classification of gas compressor with clutch for air-conditioning kit for cars and light commercial vehicles of capacity not exceeding 105 tonnes which was earlier approved under sub-headings 8414.10 to 8415.00. The description of the product had been amended to read "automotive air-conditioner in unassembled state".

4. Being aggrieved from these orders, the respondent had filed appeals to the Collector of Central Excise (Appeals).

5. Before the Collector (Appeals), the respondent had contended that in the correspondence exchanged between Maruti Udyog Ltd. and Subros Ltd. regarding bulk order, the items to be supplied by M/s. Subros Ltd. had been described as air-

conditioning components kits. In the letter dated 21-9-1987 from Maruti Udyog Ltd. addressed to Messrs Subros Ltd., it was certified that "we confirm that blower assembly is not part of AC kit. Blower assembly is a standard fitment in our car and at present, we are importing it from our collaborators, M/s. Suzuki Motor Co., Japan and same is fitted in our car in MUL." There was another certificate dated 1st July, 1987 from Messrs Nippon-denso Co. Ltd., the collaborators of M/s. Subros Ltd. This certificate reads as "We are in collaboration with M/s. Subros Ltd. for manufacture of components of automotive air-conditioners for the Maruti car. The parts and components manufactured under our supervision do not contain a motor driven fan or blower and since the components also do not have a Prime Mover, which is the Maruti's car engine, the components manufactured by us cannot be assembled and made to function independently without fitment in the Maruti Car." The learned Collector of Central Excise (Appeals) had also referred to HSCN, the heading note under sub-heading 8415 which reads as under :- "This heading covers certain apparatus for maintaining required conditions of temperature and humidity in closed spaces. The machine may also comprise elements for the purification of air. They are used for air-conditioning offices, homes, public halls, ships, motor vehicles etc. and also in certain industrial installations requiring special atmospheric conditions (e.g. in the textile, paper, tobacco or food industries). The heading applies only to machines:

- (1) equipped with a motor driven fan or blower, and
- (2) designed to change both the temperature (a heating or cooling element or both) and the humidity (a humidifying or drying element or both) of air and
- (3) for which the elements mentioned in

(1) and

(2) are presented together." The note further states that from the structural point of view, the air-conditioning machines of this heading must, therefore, incorporate, in addition to the motor driven or blower for circulating the air, at least the following elements :- "An air heating device (operated by hot water etc.) and an air humidifier or an air dehumidifier, a cold water coil or a refrigerator unit evaporator

or some other type of cooling element with a separate device for changing the humidity of the air." The learned Collector of Central Excise (Appeals) had taken the view that unless the apparatus or machine was equipped with a motor driven fan or blower, it could not fall under Tariff Sub-heading 8415.00. He also did not accept the application of Rule 2(a) of the Rules of Interpretation and Note 4 to Section XVI. The Collector (Appeals) had held that the classification of the products viz. gas compressor, cooling unit and other components and parts by clubbing them together and treating them as one full set of air-conditioner under sub-heading 8415.00 as taken by the Department could not, therefore, be sustained.

He further held that since the appeal under Section 35E(4) against the order of the Asstt. Collector on the classification lists No. 103 and 207 was pending before the Collector of Central Excise (Appeals), the Asstt. Collector was not competent to modify the order passed by the Asstt. Collector of Central Excise, Noida on the classification list No. 207/86. He had held that the Asstt. Collector's order on classification lists No. 207/86 and 103/86 were bad in law and were in excess of jurisdiction. He had dismissed the applications filed by the Asstt. Collector and had allowed the appeal filed by M/s. Subros Ltd. 6. Being aggrieved from the aforesaid order, the Collector of Central Excise, Meerut, has come in appeal before the Tribunal.

7. Shri J.N. Nigam, the learned Senior Departmental Representative has appeared on behalf of the appellant. Shri Nigam has made a prayer for accepting the miscellaneous application No. 317/88-B1 dated 18th August, 1988 making a prayer for admission of additional evidence which was the second annual report for 1986-87 of the respondent, Messrs Subros Ltd. Shri Nigam stated that the period involved in June, 1986 to May, 1987 and the accounting year ending of the respondent is 30th April, 1987 and the same may be taken on record.

8. Shri B.B. Gujral, the learned Advocate who had appeared on behalf of the respondent, stated that he has got no objection to its admission.

9. After hearing both the sides, the Bench had allowed the miscellaneous application No. 317/88-B2 filed by the revenue.

10. Shri B.B. Gujral, the learned Advocate who had appeared on behalf of the respondent filed a miscellaneous application which was registered as miscellaneous application No. 322/88-B1. Shri Gujral, the learned Advocate, stated that the certificate dated 1st July, 1987 was produced before the Collector (Appeals) and this certificate is dated 11th August, 1988 issued by Messrs Nippondenso Co. Ltd. as an amplification of the earlier certificate. He has pleaded that the additional evidence may be admitted. In support of his argument, he has referred to the following cases :Collector of Customs v. Shalimar Paints "New grounds regarding classification raised at the stage of appeal in the Tribunal cannot be shut out solely for the reason that they were not raised before the lower authorities if it can be shown that such grounds are relevant for proper and correct determination of the classification dispute."Cynamid India Ltd. v. Collector of Central Excise, BombayCommissioner of Income-tax (Central) Madras v. Indian Express (Madurai) Pvt. Ltd. "Tribunal has jurisdiction to entertain additional ground even though not raised earlier." (4) AIR 1967 S.C. 455 - Hukwnchand Mills Ltd. v. The Commissioner of Income Tax Central, Bombay "Rules 12,27 and 28 of the Income-tax Appellate Tribunal Rules, 1946, are not exhaustive of the powers of the Tribunal. The rules are merely procedural in character and do not in any way, circumscribe or control the power of the Tribunal under S. 33(4) of the Act. Irrespective of the application of the rules, the Tribunal has therefore sufficient power under that section to remand the case to the Income-tax Officer in the manner he thinks fit.

When the question regarding applicability of the provisions of paragraph 2 of the Taxation Laws Order, 1950 was raised for the first time before the Tribunal and it was contended that such question was not permissible for the first time in appeal, it was held that the Tribunal had jurisdiction to give such permission." Shri Gujral again said that the additional evidence filed by the respondent is clarificatory to the evidence earlier filed by the respondent and the additional evidence, in fact, explains what are the goods manufactured. Shri Gujral, the learned Advocate, has pleaded that in the interest of justice the additional evidence may be admitted.

11. Shri J.N. Nigam, the learned SDR, who has appeared on behalf of the appellant states that there is a certificate filed by the respondent dated 11th

August, 1988, whereas the period of demands commenced in May, 1987. He opposes the admission of additional evidence and states that with the help of both the documents, respondent is making a new case. In support of his case, he has referred to the judgment of the Delhi High Court in the case of Gunvant and Ors. v. Collector of Central Excise and Ors. reported in 1987 (32) E.L.T. 53 (Del.) where the Delhi High Court had held that "it is well settled that additional evidence is not permissible even in appeal to enable one of the parties to remove lacuna in presenting its case at the proper stage and fill in gaps". Shri Nigam has pleaded for the rejection of the respondent's prayer for additional evidence.

12. Shri B.B. Gujral, the learned Advocate who has appeared on behalf of the respondent again said that the respondent is not removing any lacunas by the additional evidence and states that for proper disposal of the appeal, the admission of the additional evidence is very essential.

13. We have heard both the sides on the respondent's plea for the admission of additional evidence. The facts are not disputed. The earlier certificate dated 11th July, 1987 was produced before the Collector (Appeals) and the same has been admitted by him and the subsequent certificate is dated 11th August, 1988. The subsequent certificate dated 11th August, 1988 is in amplification of the earlier certificate which has been admitted in evidence by the Collector of Central Excise (Appeals). We have perused the grounds of appeal of the appellant. The appellant has not challenged the discretion exercised by the Collector of Central Excise (Appeals) in admitting the additional evidence. Shri Gujral, the learned Advocate, has cited many judgments and Shri J.N. Nigam, the learned SDR, has cited the judgment of the Delhi High Court to the effect that admission of additional evidence will mean filling in the gaps and lacunas. We have perused the provisions of Rule 23 of the CEGAT Procedure Rules and Order 41 Rule 27 of the Code of Civil Procedure. Rule 23 of the CEGAT Procedure Rules as well as Rule 27 of Order 41 of the Code of Civil Procedure are reproduced below :- (1) The parties to the appeal shall not be entitled to produce any additional evidence, either oral or documentary, before the Tribunal, but if the Tribunal is of opinion that any documents should be produced or any witness should be examined or any affidavit should be filed to enable it to pass orders or for any sufficient cause, or if

the adjudicating authority or the appellate or revisional authority has decided the case without giving sufficient opportunity to any party to adduce evidence on the points specified by them or not specified by them, the Tribunal may for reasons to be recorded, allow such documents to be produced or witnesses to be examined or affidavits to be filed or such evidence to be adduced.

(2) The production of any document or the examination of any witness or the adducing of any evidence under Sub-rule (1) may be done either before the Tribunal or before such departmental authority as the Tribunal may direct.

(3) Where any direction has been made by the Tribunal to produce any documents or to examine any witnesses or to adduce any evidence before any departmental authority, the authority shall comply with the directions of the Tribunal and after such compliance send the documents, the record of the deposition of the witnesses or the record of the evidence adduced, to the Tribunal.

(4) The Tribunal may, of its own motion, call for any documents or summon any witness on points at issue, if it considers necessary to meet the ends of justice."

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But it- (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission." We have perused the provisions of the above and are of the view that the Tribunal has got sufficient powers to admit additional evidence.

The Collector of Central Excise (Appeals) had already admitted the certificate dated 11th July, 1987 and certificate dated 11th August, 1988 is clarificatory to the earlier certificate, and there is no challenge to the admission of this additional evidence by the Collector of Central Excise (Appeals). Accordingly, we accept the argument of the learned Advocate and hold that the subsequent certificate is in amplification of the earlier certificate and we admit the same. In the result, we allow the miscellaneous application No. 322/88 filed by the respondent.

14. On merits, Shri J.N. Nigam, the learned Senior Departmental Representative, has pleaded that the only dispute in the appeal is whether the goods manufactured and cleared by the respondent are to be classified as air-conditioners or parts of the air-conditioners for automobiles. He has referred to the classification list No. 207/86 and classification list No. 103/87 which appears on pages 34,35 and 51 of the paper book. The description of the classification of the goods at Serial No. 1 has been given as gas compressor for air-conditioning kit for cars and light commercial vehicles of capacity not exceeding 7.5 tonne falling under Tariff Item 8414.10 and air-conditioning parts and accessories for cars/light commercial vehicles falling under Tariff Item 8415.00 and the respondents are claiming the benefit of Notification No. 166/86-C.E., dated 1st March, 1986 as amended by Notification No. 352/86, dated 20th June, 1986 and in the classification list No. 103/87 with effect from 22nd June, 1986 the same was shown as gas compressor for air-conditioning systems for cars and light commercial vehicles under Tariff Item 8414.10 and air-conditioning parts and accessories for car/light commercial vehicles under Tariff Item 8415.00. He has also referred to the third classification list No. 161/81 which appears on page 51 of the paper book where the description was given as automotive gas compressor with magnetic clutch (80 cc capacity) claiming assessment under sub-heading 8414.10 and parts and accessories of automotive A/Cs for cars and light commercial vehicles under sub-heading 8415.00 at the rate of Rs. 2500.00 per piece read with Notification No. 135/87-C.E., dated 8th May, 1987 and parts at the rate of 40% read with Notification No.166/86-C.E., dated 1st March, 1986 as amended from time to time and the revenue changed the classification to sub-heading 8415.00 attracting duty at the rate of Rs. 8000.00 per piece taking both the products as air-conditioners read with Notification No. 166/86, dated 1st March, 1986 as amended as per detailed

order. Shri Nigam had argued that the so-called parts by the respondent make a complete kit of air-conditioner for car. He has referred to the Order-in-Original and the order of the Collector (Appeals). He has argued that heading description speaks of air-conditioning machines comprising of a motor driven fan and elements for changing the temperature and humidity including those machines in which the humidity cannot be separately regulated. Shri Nigam has argued that in the present matter only motor driven fan and blower and the parts so removed completely retain the character of an air-conditioner. Shri Nigam has argued that finding of the Collector (Appeals) was not correct. In commercial parlance car air-conditioner works without fan and motor and blower. The car air-conditioner has been equated with window air-conditioner. He has referred to internal page 7 of the order passed by the Collector (Appeals). He has also referred to Industry Ministry letter dated 23rd January, 1986. Shri B.B. Gujral, the learned Advocate objected to the same as it was not part of the record. Shri Nigam has argued that the respondent's licence is for the manufacture of air-conditioning units and compressors. He has also referred to second annual report of the respondent and in particular referred to page 3 of the same. Shri Nigam, the learned SDR, has referred to Interpretory Rule 2-A and had argued that the goods cleared had attained the essential character of a finished article. He had also referred to Note 4 of Section 16. He has pleaded that the order passed by the Asstt. Collector is correct in law and the Collector (Appeals') order is not correct. He has referred to the judgment of the Tribunal in the case of Paharpur Cooling Tower Pvt.

Ltd., Calcutta v. Collector of Central Excise, Calcutta reported in 1986 (24) E.L.T. 611 and Inarco Limited, Bombay v. Collector of Central Excise, Bombay reported in 1987 (31) E.L.T. 469 (Tribunal). Shri Nigam has argued that in the judgment in the Paharpur Cooling Tower Pvt. Ltd. case the Tribunal had held that when the goods are specifically covered by dutiable schedule, then no matter what may be said against it, excisability follows as night is followed by day, and the Tribunal had held that electric industrial fans/blade assembly were classifiable under Item 33(2) of the Central Excise Tariff. Shri Nigam, the learned SDR, has pleaded for the acceptance of the appeals.

14A. Shri Gujral, the learned Advocate who has appeared on behalf of the respondent has argued that the appellant has not placed any evidence as to the commercial parlance. He has referred to the annual report. He has also referred to the classification list No. 103/87 which appears on page 34 of the paper book and has claimed that the goods were correctly assessed under sub-headings 8414.10 and 8415.00.

Shri Gujral has argued that no air-conditioner, can exist without a blower. He has also referred to the Harmonised Commodity Tariff and referred to sub-heading 8415.10 which appears on page 98 of the paper book which relates to air-conditioning machines, comprising a motor driven fan and elements for changing the temperature and humidity, including those machines in; which the humidity cannot be separately regulated. He has also referred to classification list No. 161 which appears on page 51 of the paper book. He has referred to Notification No. 166/86-C.E., dated 1st March, 1986 and Notification No.135/87-C.E., dated 8th May, 1987. Shri Gujral has also referred to Collector (Appeals') order and in particular he has referred to internal pages 4, 5 and 10 of the paper book. Shri Gujral has argued that the classification lists No. 103/87 and 207/86 were approved by the Asstt. Collector. Thereafter the revenue had filed applications before the Collector (Appeals) to be treated as appeals and, however, during the pendency of the appeals before the Collector (Appeals) the Asstt. Collector had modified the approval order of classification lists No. 207 and 103 which he was not competent to do so. Shri Gujral, the learned Advocate, has referred to internal page 5 of the Collector (Appeals') order where the tariff description 8415.00 has been discussed. He has stated that the tariff description provides for a complete definition of air-conditioners and, therefore, the rules of interpretation are irrelevant for the purpose of classifying of the item. An air-conditioner comes into being only after motor driven fan is fitted in the assembly. In the case of the respondent, it was claimed that since they do not have motor driven fan/blower, it was incorrect on the part of the Asstt. Collector, Central Excise, Noida to classify their product as complete air-conditioner. Reference to the note in HSCN was also made which supported the view that the complete air-conditioner should essentially have a motor driven fan (blower) and other parts mounted on the same chassis to be classified as complete air-conditioner. Shri Gujral also stated that the Asstt.

Collector had failed to determine the stage at which the excisable goods namely complete air-conditioner comes into being. An air-conditioner comes into being when a blower or motor driven fan is mounted on the assembly at the factory of M/s. Maruti Udyog Ltd. The review appeal was, therefore, contested. Shri Gujral further argued that the review appeal was rendered infructuous by the same Asstt. Collector who had changed the classification lists No. 207 and 103 which were the subject-matter of the appeal before the Collector (Appeals). Shri Gujral has referred to the observations in the Collector (Appeals') Order and has laid special emphasis on paras 13 and 14 of the Collector (Appeals') order internal page 10 where the Collector (Appeals) has observed that reference to Note 4 to Section XVI was not relevant for the issue under consideration and argued that note relates to a machine consisting of individual components intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or 85 and it has been laid down that, then the whole falls to be classified in the heading appropriate to that function. In the present case, gas compressor, cooling unit and other parts and components cleared by the respondent have not become air-conditioning machine within the meaning of the term under sub-heading 8415.00 and once a motor driven fan or blower is fitted to the air-conditioning kit, there is no dispute as to its classification. The same may be classified under sub-heading 8415.00 as air-conditioning machine. In the instant case, classification of parts and accessories has been sought under sub-heading 8415.00 by the respondent. The classification of the gas compressor has been sought for under the sub-heading 8410. The classification of the products viz. gas compressor, cooling unit and other components and parts by clubbing them together and treating them as one full set of air-conditioner as taken by the Department cannot, therefore, be sustained. The classification by the department is not correct in law. Shri Gujral has referred to a judgment of the Tribunal in the case of Bharat Heavy Electricals Ltd. v. Collector of Customs, Madras reported in 1987 (28) E.L.T. 545 (Tri.) and had laid special emphasis on para No. 8 of the judgment. The headnote reads as follows: "In order to apply the provisions of Rule 2(a) it has to be seen (1) whether the imported product had attained the approximate shape or outline of the finished article; (2) whether the said imported article can only be used for completion into the finished article and (3) these would have to be determined with

reference to the nature of the material, its bulk, quantity, weight or value. This very enumeration would, therefore, establish that no general principles can be laid down as to how and in what circumstances Rule 2(a) could be pressed into service for assessment of the imported unfinished article. In each case the factors enumerated above would have to be taken into consideration individually, and then collectively, to determine whether the imported article had attained the approximate shape or outline of the finished article and could be used only for completion into the finished article." Shri Gujral says that by no stretch of imagination the respondent's goods can be treated as complete air-conditioners. He has also referred to pages 97 and 98 of the paper book which is Notification No.135/87-C.E., dated 8th May, 1987 where the effective rate of basic excise duty on specified automotive gas compressor is Rs. 2500.00 per compressor and on page 98 is the HSCN. He has also referred to Rule 2(a) in the Harmonised Commodity Description which appears on page 86 of the paper book. Shri Gujral has also referred to the following judgment reported in 1987 (31) E.L.T. 844 (Tribunal) Punjab Con-Cast Steels Ltd. v. Collector of Customs, Bombay, where the Tribunal had held that in the case of vacuum degassing equipment and vacuum pumps parts which do not form a complete machine or have the essential character of the machine are to be classified under their specific headings and not under the heading of the parent machine. Shri Gujral has also argued that since the goods manufactured by the respondent are not a complete air-conditioner and as such the revenue authorities were not justified in assessing the same as air-conditioner. He has also referred to another judgment of the Bombay High Court in the case of Voltas Ltd. v. Union of India reported in 1988 (17) ECR 47 and has laid special emphasis on paras No. 21 and 22. He has further referred to the judgment in the case of International Tractor Co. of India Ltd. v. Union of India and Ors. reported in 1977 E.L.T. (J 133) where the Hon'ble Bombay High Court had held that the manufacture of a product is complete when it is brought into existence with all its essential components. He has also referred another judgment in the case of Geep Flashlight Industries Ltd. v. Union of India and Ors. reported in 1985 (22) E.L.T. 3 (SC) where the Hon'ble Supreme Court had held that "articles made of plastic means article made wholly of commodity commercially known as plastics and not articles made from plastics along with other material and it is a settled law

that an expression used in a taxing statute for describing a commodity must be given the meaning which is generally given to it by a person in the trade or in the market of commodities and in the sense the person conversant with the subject-matter of statute and dealing with it will attribute to it". Shri Gujral, the learned Advocate, has argued that the department has failed to place any evidence on record as to the commercial parlance for the air-conditioner and for automobile and as such these are to be admitted as classification list filed by the respondent. The appeals filed by the revenue needs to be dismissed.

15. Shri J.N. Nigam, the learned Senior Departmental Representative in reply refers to Explanatory Notes. He has stated that if M/s. Maruti Udyog had any intention of manufacturing the air-conditioner, they could have imported the parts directly also and the goods manufactured by the Respondent have to be assessed as air-conditioners. He has pleaded for the acceptance of the appeal.

16. We have heard both the sides and have gone through the facts and circumstances of the case. The facts of the case are not disputed. The Respondents had filed the following classification lists :-
 -----SI. Description of each
 Tariff Item No. Rate of duty RemarksNo. item of goods Gas Compressor for air-
 con- 8414.10 Rs. 4000/- Benefit of ditioning systems for car and light perpc.

Notfn. No.commercial vehicles 166/86-C.E., dated 1-3-86 Air-conditioning Parts
 and Ac- 8415.00 40% adv. Benefit of cessories for car/light commercial Notfn.
 No.vehicles 166/86-C.E., dated 1-3- Gas Compressor for Air-con- 8414.10 Rs.
 4000/- Benefit of ditioning systems for car and light per pc.

Notfn. No.commercial vehicles 166/86-C.E., dated 1-3-86 Air-conditioning Parts
 and Ac- 8415.00 40% adv. Benefit of cessories for car/light commercial Notfn.
 No.vehicles 166/86-C.E., dated 1-3- Automotive Gas Compressor 8414.10 Rs.
 2500/- Benefit of with Magnetic Clutch (80 cc perpc.

Notfn. No.Cap acity) 135/87-C.E., dated 8-5- Parts and Accessories of 8415.00
 40% adv. Benefit of Automotive A/Cs for cars and Notfn. No.light commercial
 vehicles 166/86-C.E., dated 1-

3----- 17. We have perused the classification lists. The only issue to be decided in the present appeals is whether the goods manufactured by the appellants are to be treated as (1) Automotive Gas Compressor with Magentic clutch (80 cc Capcity) and (2) Parts and Accessories of Automotive A/Cs for cars and light commercial vehicles as air-conditioner cumulatively, or as parts separately.

18. For the proper appreciation of the correct position the relevant tariff headings are reproduced below

heading	No.	Description	of	Rate	Sub- of
duty-----				84.14	XX
XX XX XX	8414.10	Gas compres-	110% plus sors of a kind	Rs. 12,00	84.15
8415.00	Air-condition-	110% plus ing	machines	Rs.	
15,00-----					19.

Notification No. 166/86-C.E., dated 1st March, 1986 prescribes the effective rate of duty for Gas compressors of the kind used in air-conditioners including room air-conditioners (window type), slit unit air-conditioners and package type air-conditioners of capacity not exceeding 7.5 tonne at the rate of Rs. 4,000/- per compressor vide Sl.

No. 1 of the said Notification. Sl. No. 6 of the same Notification prescribes the rate of duty on Parts and accessories of refrigerating and air-conditioning appliances and machinery, all sorts at 40% ad valorem.

(1) Automotive Gas Compressor with Magnetic Clutch (80 cc capacity) and (2) Parts and Accessories of Automotive Air-conditioners for cars and light commercial vehicles Classification Lists Number 207 and 103 were duly approved and the Respondents were paying duty accordingly after claiming the benefit of Notifications No. 166/86 dated 1st March, 1986 and 135/87 dated 8th May, 1987. For the third classification list No. 161/R/III/Noida/87 dated 8th May, 1987 effective from 8th May, 1987, the Assistant Collector had taken it differently and had assessed the items at No. 1 and 2 combined as air-conditioners and had ordered duty to be charged at the rate of Rs. 8,000/- and the grounds given in the

classification list is "classification modified in terms of Rule 173B (5) under sub-heading 8415.00 attracting duty @ Rs. 8,000/- per pc taking both the products as Air-conditioners under Notification No. 166/86 dated 1-3-1986 as amended, as per detailed order overleaf. The detailed order referred to on the body of classification list contains reference to Rule 2(a) of the Rules of Interpretation and Note 4 to Section XVI of the Central Excise Tariff Act, 1985. By giving reference to Rule 2(a) of the Rules of Interpretation, the conclusion was drawn that the Respondents, Products had the essential character of air-conditioners, on the ground that incomplete and unfinished articles are to be treated as complete and finished articles and also unassembled or disassembled articles must be classified as if it were assembled. Reference to Note 4 of Section XVI was made "where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cable or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function." 21. The Appellant's plea before us is that the Tariff Entry includes air-conditioning machines, comprising a motor driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated. Tariff description provides for a complete definition of air-conditioners in the matter before us there is no motor driven fan/blower. Note in HSCN also 4 supported the view that the complete air-conditioner should essentially have a motor driven fan/blower.

22. We have also perused the Certificates dated 11th August, 1988 and 1st July, 1987 which appear on page 1 and 84 of the paper book respectively. The same are reproduced below :- -----

----- T 448 1-1 SHOWA-CHO KARIYA CITY AICHI-PREF., JAPAN
TELEX : NIDENSO J 59916 CABLE : NIDENSO KARIYA We are in collaboration with M/s. Subros Limited for manufacture of components of Automotive Air-conditioners for the MARUTI CAR. The parts and components manufactured under our supervision do not contain a motor driven fan or blower and since the components also do not have a Prime Mover, which is the Maruti's Car Engine, the components manufactured by us cannot be assembled and made to function

independently without fitment in the Maruti Car.

In amplification of our Certificate dated the 01st July, 1988 we wish to state that M/s. Subros Ltd. supply only some essential parts of Air-conditioners either imported from Japan or locally procured to M/s.

Maruti Udyog Limited.

They assemble only the Gas Compressor with Magnetic Clutch and certain parts of the Cooling Unit i.e. Evaporator with technical knowhow provided by us.

M/s. Maruti Udyog Limited subject these parts to vigorous quality check and carries out necessary modifications before they are matched with other parts manufactured by M/s. Maruti Udyog Limited.

A complete Air-conditioning system is manufactured according to the prescribed design and specifications, the technical knowhow of which is available only with M/s. Maruti Udyog Ltd. This system is thereafter installed in the Deluxe Model Maruti cars. M/s. Subros Limited are not technically equipped to make complete Air-conditioners for these cars.

for NIPPONDENS 23. Before we come to any conclusion we would like to refer to McGraw-Hill Encyclopaedia of Science and Technology Vol. I, 5th Division. Relevant extracts from pages 201 and 202 are reproduced below :- "Air conditioning systems. - A complete air-conditioning system is capable of adding and removing heat and moisture and of filtering dust and odorants from the space or spaces it serves. Systems that heat, humidify, and filter only, for control of comfort in winter, are called winter air-conditioning systems; those that cool, dehumidify, and filter only are called summer air-conditioning systems, provided they are fitted with proper controls to maintain design levels of temperature, relative humidity, and air purity.

"Design conditions may be maintained by multiple independent subsystems tied together by a single control system. Such arrangements, called split systems, might consist, for example, of hot-water baseboard heating convectors around a perimeter wall to offset window and wall heat losses when required, plus a central

cold-air distribution system to pick up heat and moisture gains as required and to provide filtration for dust and odor.

"Air-conditioning systems are either unitary or built-up. The window or through-the-wall air-conditioner (Fig.2) is an example of a unitary summer air-conditioning system; the entire system is housed in a single package which contains heat removal, dehumidification, and filtration capabilities. When an electric heater is built into it with suitable controls, it functions as a year-round air-conditioning system. Unitary air-conditioners are manufactured in capacities as high as 100 tons (1 ton of air-conditioning equals 12,000 Btu/hr) and are designed to be mounted conveniently on roofs, on the ground, or other convenient location, where they can be connected by ductwork to the conditioned space.

"Built-up or field-erected systems are composed of factory-built subassemblies interconnected by means such as piping, wiring, and ducting during final assembly on the building site. Their capacities range up to thousands of tons of refrigeration and millions of Btu per hr of heating. Most large buildings are so conditioned.

"Another important and somewhat parallel distinction can be made between incremental and central systems. An incremental system serves a single space; each space to be conditioned has its own, self-contained heating-cooling-dehumidifying-filtering unit. Central systems serve many or all of the conditioned spaces in a building.

They range from small, unitary packaged systems to serve single-family residences to large, built-up or field-erected systems serving large buildings.

"When many buildings, each with its own air-conditioning system which is complete except for a refrigeration and a heating source, are tied to a central plant that distributes chilled water and hot water or steam, the interconnection is referred to as a district heating and cooling system. This system is especially useful for campuses, medical complexes, and office complexes under a single management.

"Conditioning of spaces. - Air temperature in a space can be controlled by radiant panels in floor, walls, or ceiling to emit or absorb energy, depending on panel temperature. Such is the radiant panel system. However, to control humidity and air purity and in most systems for controlling air temperature, a portion of the air in the space is withdrawn, processed, and returned to the space to mix with the remaining air. In the language of the engineer, a portion of the room air is returned (to an air-handling unit) and, after being conditioned, is supplied to the space. A portion of the return air is spilled (exhausted to the outdoors) while an equal quantity (of outdoor air) is brought into the system and mixed with the remaining return air before entering the air handler.

"Typically, the air-handling unit contains a filter, a cooling coil, a heating coil, and a fan in a suitable casing (Fig. 3). The filter removes dust from both return and outside air. The cooling coil, either containing recirculating chilled water or boiling refrigerant, lowers air temperature sufficiently to dehumidify it to the required degree. The heating coil, in winter, serves a straightforward heating function, but when the cooling coil is functioning, it serves to raise the temperature of the dehumidified air (to reheat it) to the exact temperature required to perform its function, in micro-cosm, in room units in each space, as part of a self-contained, unitary air-conditioner, or it may be a huge unit handling return air from an entire building." 24. A simple look at Fig. 2 reproduced from McGraw-Hill Encyclopaedia of Science and Technology will show that air-conditioner's main parts are compressor, condenser, fan, motor, blower, cold evaporator and filter. It is not disputed that the goods manufactured by the Respondents do not contain fan, motor and blower. Now coming to the Tariff, we would like to observe that sub-heading 8415.00 reads, "Air-conditioning machines, comprising a motor driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated." In the HSCN, the heading note under sub-heading 8415.00 reads, "this heading covers certain apparatus for maintaining required conditions of temperature and humidity in closed spaces. The machine may also comprise elements for the purification of air. They are used for air-conditioning offices, homes, public halls, ships, motor vehicles etc. and also in industrial installations requiring special atmospheric conditions (e.g.

in the textile, paper, tobacco or food industries). The heading applies only to machines; (1) equipped with a motor driven fan or blower, and (2) designed to change both the temperature (a heating or cooling element or both) and the humidity (a humidifying or drying element or both) or air and (3) for which the elements mentioned in (1) and (2) are presented together." The note further states that from the structural point of view, the air-conditioning machines of this heading must, therefore, incorporate, in addition to the motor driven fan or blower for circulating the air, at least the following elements :- "An air heating device (operated by hot water etc. and an air humidifier or an air dehumidifier, a cold water coil or a refrigerator unit evaporator or some other type of cooling element with a separate device for changing the humidity of the air." This apparently shows that unless the apparatus or machine is equipped with a motor driven fan or blower, it cannot fall under Tariff sub-heading 8415.00.

25. Shri J.N. Nigam, the learned SDR had referred to 2nd Annual Report for 1986-87 and stated that the Respondent himself had mentioned on page 3 of the said report that "the Company supplied over 14,000 Air-conditioning kits to its principal customer M/s. Maruti Udyog Limited....The Company has been granted a licence for the production of Automotive Air-conditioning systems to the capacity of 50,000 kits per annum. The market potential of Automotive Air-conditioning system is increasing because more and more people are opting for Air-conditioned vehicles to have better comfort and efficiency in their working due to large distances people have to travel these days." 26. We have perused the Tariff above. In the tariff there is no entry like automotive air-conditioners. Shri Nigam, the learned SDR had also referred to Rule 2(a) of the Rules of interpretation of Central Excise Tariff Act, 1985. The same is not relevant as the Tariff Entry itself is very clear and the Tariff Entry refers to air-conditioning machine comprising of motor driven fan. The contention of the revenue authorities that the Respondents' products, though cleared in unassembled form, have the essential character of complete and finished goods cannot be accepted and we are of the view that the goods should be assessed as have been claimed by the Respondents in their classification lists. Sub-heading 8415.00 makes it absolutely clear that a machine in order to be called an air-conditioning machine must comprise a motor driven fan and elements for changing the temperature and humidity. In the matters before us, motor driven

fan and a blower is missing. The gas compressor, cooling unit and other parts and accessories are cleared by the Respondents cannot perform the function of an air-conditioner viz., changing of temperature/humidity. This is possible only when a motor driven fan or blower is fitted in the air-conditioning kit. Accordingly the goods in dispute do not pass the test of essential character. Reference to Note 4 to Section XVI is also not relevant. The note relates to a machine consisting of individual components intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or 85, and it has been laid down that, then the whole falls to be classified in the heading appropriate to that function. In the matters before us, gas compressor, cooling unit and other parts and components cleared by the Respondents have not become "air-conditioning machine" within the meaning of the term under sub-heading 8415.00 and once a motor driven fan or blower is fitted to the air-conditioning kit, there is no dispute as to its classification. The same will be classified under sub-heading 8415.00 as air-conditioning machine. In the matter before us classification of parts and accessories has been sought for under sub-heading 8415.00 by the Respondents. The classification of these products under sub-heading 8414.00 cannot be accepted as has been claimed by the Department. Accordingly we uphold the findings of the Collector (Appeals).

27. In the result the six appeals filed by the Revenue are dismissed.

The Revenue authorities are directed to give consequential effect to this order.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com