SUPREME COURT OF INDIA

Commissioner of Central Excise, Delhi-III

Vs.

Carrier Aircon Limited

(C. K. Thakker and Mrs.Ruma Pal JJ.)

04.05.2005

C.A.Nos.3823-3824 of 2000

JUDGMENT

C. K. Thakker, J:-

1. The question in these appeals is whether the Commissioner of Central Excise had properly exercised his power of revision under Sec.35E(2) of the *Central Excise and Salt Act, 1944*. There is a further issue, namely, whether the decision taken on appeal by the Commissioner (Appeals) was correct. It is not necessary to go into the second issue inasmuch as we are of the view that the first question must be answered in the negative.

2. The power of review is granted under Sec. 35E. It reads as follows:

> "35E(2) : The Collector, Central Excise may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in his order."

3. It appears that the Commissioner [referred to as the Collector in the provision quoted above] must take a decision on the basis of the records available before the adjudicating authority viz. The Assistant Commissioner for the purpose of satisfying himself whether the decision taken by the Assistant Commissioner was legal or proper. If the Commissioner is satisfied that the decision was not legal or proper, he may direct the Department to appeal to the Appellate Authority for determination of points as may be specified by him in his revisional order.

4. In this case, the issue was whether Chillers were classifiable under Tariff Entry 84.18 (as contended by the respondent) or Tariff Entry 8415.00 or 84.19. The relevant Tariff Entries read as follows:

"84.15 : 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.

84.18 : Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air-conditioning machines of heading No. 84.15.

84.19 : Machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterlising, pasteurizing, steaming, drying, evaporating, vaporising, condensing or cooling, other than machinery or plants of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric."

5. The Assistant Commissioner, by his order dated 27.10.1997, was of the view that the Chillers were properly classifiable under Tariff Entry 84.18. The Commissioner relying upon a report of the Central Economics Intelligence Bureau (CEIB) to the effect that other importers of Chillers had been describing them as heat pumps for the purpose of import, was of the view that this subsequent fact merited a revision of the order of the Assistant Collector. The Commissioner, accordingly, directed the Assistant Commissioner, Central Excise, to appeal to the Commissioner of Central Excise for setting aside the order dated 27.10.1997. The matter was taken up before the Commissioner (Appeals) who decided against the respondent and remanded the matter back to the Assistant Collector for redetermination of the liability.

6. The respondent challenged this order of the Commissioner before the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT). CEGAT was of the view that the Commissioner of Central Excise could not have passed the order upon points not arising out of the decision or order of the subordinate adjudicating authority and could not have relied on new material. Several decisions had been relied upon in support of this view and the appeal of the respondent was allowed. Being aggrieved, the Department has preferred these appeals before us.

7. We are of the view that there is no substance in these appeals because the principle of law as enunciated by the Tribunal is correct. Furthermore the CEIB report could not in any event mean that Chillers could not be classified under Tariff Entry 84.18 as heat pumps were also classifiable under that tariff entry. In these circumstances, the appeals are dismissed.