**SUPREME COURT OF INDIA**

Commissioner of Central Excise, Delhi

Vs

Messrs Allied Air-Conditioning Corporation (Regd.)

Appeal (Civil) 1100-1101 of 2001

(Arijit Pasayat and S. H. Kapadia, JJ)

13.09.2006

**JUDGMENT**

**ARIJIT PASAYAT, J.**

These two appeals are directed against a common judgment of the Central Excise and Gold Control Appellate Tribunal, New Delhi, (in short the 'CEGAT'). Respondent (hereinafter referred to as the 'assessee') preferred the appeals before the Tribunal against a common order dated 31.3.1997 passed by Commissioner of Central Excise, New Delhi (in short the 'Commissioner'). The issues involved in the appeals were (a) the valuation of "packaged type Air Conditioner" and (b) whether the extended period of limitation is invokable in demanding duty. The basic facts in a nutshell are as follows:

The respondent is engaged inter alia in the manufacture of, inter alia, package type Air Conditioners falling under Tariff Item No. 29-A of the erstwhile Tariff and Chapter heading No.84.15 of the Central Excise Tariff Act, 1985 (in short the 'Tariff Act'). According to the appellant, the respondent was selling the air conditioners by assembling the same at site through orders procured from various authorities by way of Tenders/Contracts. The Contracts /Tenders entered into by the assessee are broadly divided into nine components:

1. Compressors

2. Accessories

3. Pumps

4. Cooling Towers

5. Humidification & heating etc.

6. Ducting material

7. Plumbing material

8. Civil Work

9. Electrical material

Undisputedly, the respondent was filing its price list in respect of compressors and assessories i.e. Item Nos.1 & 2 as noted above. Premises of the respondent, where activities were being carried on, was visited by Central Excise Officers on 7.3.1987. Certain records were examined. Concerned officers were of the view that there was evasion of duty by mis- declaration. Respondent had cleared the air conditioners without payment of duty by taking the plea that packaged type air conditioners were being cleared in a knocked down condition and were assembled directly at site and were not therefore assessable as air conditioners. Show cause notice was issued on 12.10.1988 for assessment years 1984-85, 1985-86 & 1986-87 (part period).

On 28.3.1989 the officials again visited the premises and found that the respondent was continuing to clear the goods and was not correctly working out the duty payable. The second show cause notice was issued for the period covering assessment year 1986-87 (residual part), 1987-88 and 1988- 89. The extended period under proviso to Section 11(A) of the Central Excise Act, 1944 (in short the 'Act') was invoked. After considering these submissions made by the respondent, these two show cause notices were adjudicated and duty demand of Rs.12, 20, 936/- was confirmed and penalty of Rs. 1, 00, 000/- was imposed in respect of first show cause notice. For the subsequent show cause notice a duty demand of Rs.2, 79, 169/- was confirmed and penalty of Rs.30, 000/- was imposed. Respondent preferred appeals before CEGAT. By a common order, CEGAT remanded the matter to the Commissioner for fresh consideration with regard to valuation, rate of duty and limitation. On fresh adjudication on 31.3.1997 Commissioner noted that the respondent had wrongly filed the price list in Part I on the issue of valuation. Out of nine items, in respect of two items there was no dispute. Commissioner excluded the valuation of the civil work from the assessable value. Demand of Rs.9, 34, 179/-for the consolidated period was confirmed and penalty of Rs.2, 00, 000/- was imposed under Rules 9(2), 173 Q and 226 of the Central Excise Rules, 1944 (in short the

'Rules'). The order was challenged by the respondent before the CEGAT. Without discussing in respect of the individual items, the Tribunal allowed respondent's appeal relying on a decision of this Court in PSI Data System Ltd. v. CCE  5 SC)]. It however, held that the extended period of limitation was to be applied. It was noted that in respect of the first show cause notice dated 12.10.1988 that since the copies of the contract were not furnished along with price list which were filed in Form I and not in Form II which is meant for the contract prices, Department was not aware of the existence of the contract. In respect of second show cause notice, it was held that the respondent had not refuted the finding of the Commissioner to the effect that goods were cleared without the cover of the excise document and without entering them in the Statutory records. Therefore, it was held that the extended period of limitation was available. But since it held that because of disputed items were not to be included, adjudicating authority has to work out the assessable value with a view to determine whether any duty is to be demanded from the respondent. If any duty was to be demanded, the amount of penalty was to be worked out at the discretion of the Collector to be imposed.

In support of the appeals, Mr. A.K. Ganguli, learned Sr. counsel submitted that PSI's case (supra) was not applicable to the facts of the present case. CEGAT even did not analyse the factual position and there was no discussion as to why the articles covered under various items were not to be reckoned to work out the assessable value. It has also not been decided as to which of the items can be termed as "assessories" and which can be termed as "components".

Learned counsel for the respondent on the other hand submitted that the CEGAT had taken into account the broad features and had rightly decided that the valuation of the items in question were to be excluded. It was further submitted that the CEGAT's view about limitation is not correct.

In Black's Law Dictionary (5th Edn. p. 13) 'accessory' has been defined as anything which is joined to another thing as an ornament, or to render it more perfect, or which accompanies it, or is connected with it as an incident, or as subordinate to it, or which belongs to or with it, adjunct or accompaniment, a thing of subordinate importance. Aiding or contributing in secondary way of assisting in or contributing to as a subordinate is the essence on the basis of which it can be decided whether an article is an accessory or not. Whether an article or part is an accessory cannot be decided with reference to its necessity to its effective use of the goods to w which it is joined as a whole. General adaptability may be relevant but may not by itself be conclusive. Take for instance stereo or air-conditioner designed and manufactured for fitment in a motorcar. It would not be absolutely necessary or generally adapted. But when they are fitted to the vehicle, undoubtedly it would add comfort or enjoyment in the use of the vehicle. Another test may be whether a particular article or articles or parts, can be said to be available for sale in an automobile market or shops or places of manufacture; if the dealer says it to be available certainly such an article or part would be manufactured or kept for sale only as an accessory for the use in the motor vehicle, Of course, this may not also be a conclusive test but it is given by only way of illustration. It may be noted that some of the parts, in the case of a motor car like axle, steering, tyres, battery etc. are absolutely necessary accessories for the effective use of the motor vehicle. (See Mehra Brothers v. Joint Commercial Officer Madras.

In the absence of any definition of the term "component parts" it is permissible to refer to the

dictionary meaning of the word "component". According to the Webster Comprehensive Dictionary, International Edition the word 'component" inter alia means a constituent part. (See Star Paper Mills Ltd. v. Collector of Central Excise .

By way of example, a spare part is a replacement part to replace a damaged or worn-out component but it is, nevertheless, a component part. In such cases, "Component" was the genus and 'spare' was a species thereof; it was a component which was used for replacement. (See Hindustan Sanitaryware & Industries Ltd. & Lakshmi Cement v. Collector of Customs, Calcutta

A bare reading of the CEGAT's order makes the position clear that it has not analysed each item individually. It has also not indicated how the ratio in PSI's case (supra) has any relevance. The same was rendered in entirely different factual scenario. A judgment should be understood in the light of facts of the case and no more should be read into it than what it actually says. It is neither desirable nor permissible to pick out a word or a sentence from the judgment divorced from the context of the question under consideration and treat it to be complete law decided by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. (See Mehboob Dawood Shaikh v. State of Maharashtra CEGAT has also been not analysed the respective stand of the appellant and the respondent on the issue of limitation elaborately. Various documents were pressed into service by the parties in support of their respective stand. The relevance of these documents has not been examined in detail by CEGAT.

In the aforesaid circumstances we deem it proper to remit the matter to CEGAT to consider the stand of the revenue as regards the disputed items and deal with the items individually and also examine the rival stand on the question of limitation. Let the exercise be done at the earliest as the matter is pending since long.

Appeals are accordingly disposed of with no orders as to costs.