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COLLECTOR OF CUSTOMS, MADRAS

v.

INDIA ORGANIC CHEMICALS LTD.

MAY 3, 2000

B

[S.P. BHARUCHA AND SHIVARAJ V. PATIL, JJ.]

*Customs Tariff Act :*

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*Central Excise Tariff—Tariff Item 68—Diesel engine set—Import of—Additional duty on—Assessee claiming refund on the ground that the said set comprised of a diesel engine and a generator and additional duty should have been charged separately on each of the two components—Claim rejected by Assistant Collector of Customs and Collector of Customs (Appeals) but allowed by Tribunal applying S.19 of Customs Act—Held, S. 19 of Customs Act not applicable—S. 19 applies to duty under Customs Act and not for purposes of assessment of additional duty under Customs Tariff Act—Tariff Item 68 applicable—Order of Tribunal set aside.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8308 of 1995.

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From the Judgment and Order dated 2.7.91 of the Central Excise Customs and Gold (Control) Appellate Tribunal, New Delhi in A. No. C/480/84-B2 in O. No. C/165/91-B2.

N.K. Bajpai, K.K. Dhawan and P. Parmeswaran for the Appellant.

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Rajiv Nanda and S. Rajappa for the Respondent.

The following Order of the Court was delivered :

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The respondent imported a diesel engine set. The invoice thereof showed the price of Rs. 8,50,740 for the said set along with standard spares and accessories. The Customs Department assessed the said set for the purposes of additional duty of Customs under T.I. 68 of the Central Excise Tariff and, accordingly, charged additional duty at the rate of 8 per cent *ad valorem*. The respondent filed a refund claim. It state that the said set comprised of a diesel engine and an alternator. It provided the break up of the price of the said set, namely, Rs. 5,95,540 for the diesel engine and Rs. 2,55,200 for the alternator. It claimed that the additional duty should have

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been charged separately on each of the two components of the said set and the benefit of exemption notifications in this regard should have been given. The refund claim was rejected by the Assistant Collector of Customs. The respondent's appeal to the Collector of Customs (Appeals) failed.

The respondent carried the matter to the Tribunal. The Tribunal applied Section 19 of the Customs Act and came to the conclusion that the two main components of the said set, namely, the diesel engine and the generator, should have been separately assessed to additional duty and the benefit of the applicable exemption notifications given. Against the order of the Tribunal, the Customs authorities have preferred this appeal.

In the first place, Section 19 of the Customs Act is inapplicable to the assessment of additional duty under the Customs Tariff Act. Section 19 applies to "duty" that is, "duty under the Customs Act", as is clear from Section 2(15) of the Customs Act. The method of determination of Customs duty thereunder where goods consist of articles liable to different rates of Customs duty is not applicable for the purposes of assessment of additional duty under the Customs Tariff Act.

As is clear from the order of the Tribunal, what respondent had imported was the said set. That was what the invoice referred to and it gave the price for it. That the said set comprised of a diesel engine and an alternator was of no consequence for the purposes of assessment of additional duty. There is no dispute that for the purposes of such assessment of the said set, Tariff Item 68 was applicable.

We think, in the circumstances, that the appeal should be allowed and the order of the Tribunal set aside. The order of the authorities below shall regulate the assessment of additional duty on the said set.

Order on the appeal accordingly. No order as to costs.

R.P.

Appeal allowed.