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SANDEN VIKAS (INDIA) LTD.

v.

COLLECTOR OF CENTRAL EXCISE, NEW DELHI

MARCH 4, 2003

B

[SYED SHAH MOHAMMED QUADRI AND ASHOK BHAN, JJ.]

Central Excise Tariff Act, 1985

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Schedule—Heading 8415—Item No. 5—Car air conditioning kit—Automotive gas compressor with or without magnetic clutch—Classification of—Exemption Notification No. 166/86-CE, dated 1.3.1986 -Explanation 2—Heading 8415—Item Nos. 3 and 8—Assessee-manufacturer classifying goods under Item No. 5 of Heading 8415 of Schedule to the Act for purposes of availing benefit of exemption Notification—Held, an air conditioning kit fell

D

within the meaning of 'air-conditioners' against Item No. 3 before March 20, 1990—This position continued till Item No. 5 was amended and Item No. 8 was inserted in the Notification where specific entry with regard to parts of car air-conditioner and car air-conditioning kit was provided—Specific entry prevails over general entry and, therefore, with effect from March 20, 1990 till July 25, 1991, air-conditioning kit which comprises of various parts are

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classifiable against item No. 8 of the Notification—As regards the automotive gas compressor (with or without magnetic clutch), the Explanation-2 which was added to the Notification on 25.7.1991, has the effect of taking it out of the car air-conditioning kit—Consequently, 'car air-conditioning kit minus automotive gas compressor with or without magnetic clutch' will remain in

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the description of goods against Item No. 8 of the Notification and the excluded part of the kit, namely, automotive gas compressor with or without magnetic clutch, will cease to be part of Item No. 8 and will be liable to duty separately—Interpretation of Statute—Tariff Items—Classification of.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8079 of 1995.

G

From the Judgment and Order dated 31.3.95 of the Central Excise Customs and Gold (Control) Appellate Tribunal, New Delhi in A. No. E/5095/92-B1 in F.O. No. E/195 of 1995-B1.

V. Lakshmikumar, Alok Yadav, V. Balachandran for the Appellant.

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M.L. Verma, Dileep Tandon and B.K. Prasad Advs. for the Respondent. A

The following Order of the Court was delivered.

This appeal, by the assessee arises from the judgment of the Customs, Excise and Gold (Control) Appellate Tribunal at New Delhi (for short, the Tribunal) in Final Order No.E/195/95-81, dated March 31, 1995. B

The appellant-assessee is a manufacturer of car air-conditioning kits. It classified the said goods under Item no. 5 of Heading 8415 of the Schedule to the Central Excise Tariff Act, 1985 (for short, the Act) for the purpose of availing the benefit of exemption of Notification No. 166/86-CE dated March 1, 1986 (as amended from time to time). Though the appellant sought to contend that it was only manufacturing parts of the air-conditioning kit and, therefore, the kit cannot be treated as an air-conditioner, the Assistant Collector did treat the same as air-conditioning system falling under item no. 3 of Heading 8415 of the Notification. That order is said to be the subject matter of an appeal. Be that as it may, on March 20, 1990, a new Entry, item no. 8., was added to the table of the Notification, which reads thus: C D

Sl. No.	Heading No. or Sub-heading No.	Description of goods	Rate	Conditions
08.	84.15 84.18 84.19 8481.10 8481.91, 8536.10 9032.11 or 9032.91	Parts and accessories of car air-conditioner including car air-conditioning kit	sixty five percent ad valorem.	-

Thereafter, the appellant classified the air-conditioning kits under the said entry for purposes of levy of excise duty. On October 1, 1990, the Assistant Collector, Central Excise, Division-I, Faridabad issued a notice to the appellant stating that under the said entry (sl. no. 8), the sub-heading relating to compressor has not been included in the second column of the E F G H

A table and, as the car air-conditioning kits include compressors, they fall under item no.3 (Heading 8415.00) of the Notification; the appellant was called upon to show cause as to why excise duty amounted to Rs. 2,20,74,021.30 should not be demanded from it. We are informed that there have been series of notices and the total net demand under the said notices was in a sum of Rs. 3,68,81,590. The appellant replied to the show cause notice asserting that the car air-conditioning kit, inclusive of compressor, manufactured by it, is a machinery especially designed to be used for air-conditioning of motor vehicle but, as it is not usable as room air-conditioner, split unit air-conditioner or package type air-conditioner, it cannot be classified in that group; the components of the car air-conditioner kit are nothing but parts of car air-conditioner and the car air-conditioning kit was known as such in common parlance, and, therefore, it was classifiable under sl. no. 8 of the said notification.

The Assistant Collector by his order dated January 24, 1992 confirmed the demand. It was upheld by the Collector (Appeals) by his order dated July 13, 1992. The appellant carried the matter in appeal before the Tribunal. By the impugned order, the Tribunal dismissed the appeal. It is against that order that the appellant is in appeal before us.

Mr. Sridharan, the learned counsel for the appellants, contends that for the period before 1990 as well as after 1990, the case of the appellant has consistently been that a car air-conditioning kit comprises of only parts and it cannot be treated as an air-conditioning system within the meaning of item no.3 of the said notification. Mr. Verma, the learned senior counsel appearing for the Revenue, on the other hand, contends that inasmuch as the parts put together produce the effect of cooling, as found by the Assistant Collector and confirmed by the Collector (Appeals) and the Tribunal, it can appropriately be called as air-conditioning system and would, therefore, be dutiable under item no.3 of the said Notification.

To appreciate the contentions of the learned counsel, we may refer to the substance of the said Notification.

By the said Notification, the Central Government exempted the goods of the description specified in column (3) of the Table annexed to the Notification and falling under Heading No. or Sub-heading No. of the Schedule to the Central Excise Tariff Act, 1985 specified in the corresponding entry in column 2 of the said Table from so much of the duty of excise leviable

thereon, which is specified in the said Schedule, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said table. This was subject to the conditions, if any, laid down in the corresponding entry in column (5) thereof. A

The germane question that arises for consideration is: whether the car air-conditioning kit is classifiable under item no.3 or under item no.8 of the table to the said Notification. B

Item No. 3 of the said Notification reads as under :

Sl. No.	Heading No. or Sub-heading No.	Description of goods	Rate	Conditions	
03.	8415.00	Air-conditioners including room air-conditioners (window type), split unit air-conditioners and package type air-conditioners-(a) of capacity not exceeding 1.5 tonnes	Rs. 10000 per air-conditioner	-	D
		(b) of capacity exceeding 1.5 tonnes but not exceeding 3 tonnes.	Rs. 12,600 per air-conditioner	-	E
		(c) of capacity exceeding 3 tonnes but not exceeding 7.5 tonnes	Rs. 21,000 per air-conditioner	-	F
		(d) of capacity of exceedings 7.5 tonnes but not exceeding 10 tonnes	Rs. 42,000 per air-conditioner	-	G
		(e) of capacity exceeding 10 tonnes but not exceeding 15 tonnes	Rs. 44,000 per air-conditioner	-	H

- A The description of the goods given against item no. 3, in column (3), is air-conditioners which include room air-conditioners (window type), split unit air-conditioners and package type air-conditioner which are classifiable under Heading 8415.00 of the Schedule to the Act. The description of the goods mentioned in column (3) against item no. 5, before March 20, 1990, was: "Parts and accessories of refrigerating and air-conditioning appliances and machinery, all sorts".
- B It is worth noticing that in this item there was no mention of the 'parts and accessories of car air-conditioner including car air-conditioner kit.' Under item no.5 entries in column (2) of the Table includes various sub-headings, namely, 84.15, 84.18, 84.19, 8476.91, 8481.10, 8481.91, 8536.10, 9032.11 or 9032.91. These sub-headings refer to parts and accessories of goods falling thereunder; the sub-heading (8414.10) relating to gas compressors is not shown therein. After the amendment, made on March 20, 1990, in column (3) the following words were added against item no.5:
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"other than the parts and accessories of car air-conditioner including car air-conditioner kit."

- D What is excluded from item no. 5 is mentioned against item no. 8, quoted above.

From the 'Memorandum explaining the provisions in the Finance Bill, 1990', insofar as it relates to Chapter 84, the following needs to be referred.

- E "45. CHAPTER 84

45.1 Car Airconditioning parts including kits thereof

- (i) Notification No. 166/86-Central Excises dated 1.3.86 is being amended so as to increase duty on car airconditioning parts including kits from the existing 40% *ad valorem* to 65% *ad valorem*. The duty of airconditioner of capacity not exceeding 1.5 tonnes is being raised from Rs. 9450 per airconditioner to Rs. 10,000 per airconditioner. (For details, Notification no. 75/90-Central Excises may be seen.)"
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- G A careful reading of the items afore-mentioned, in the light of the note under Chapter 84 in the Memorandum, leaves no doubt in our minds that exclusion of the afore-mentioned goods from the description of goods against item no.5 and their specification against item no.8 with effect from March 20, 1990, was with the intention of creating a specific entry in regard to car air-conditioners-both parts and accessories thereof as well as car air-conditioning kits.
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As the air-conditions kit is meant for providing air-conditioning in car and as the description of the goods first mentioned against column (3) which notes air-conditioners, we are inclined to take the view that the car air-conditioning kit fell within the meaning of the air-conditioners against item no.3 before March 20, 1990. This position continued till item no.5 was amended and item no.8 inserted in the said Notification where specific entry with regard to parts and accessories of car air-conditioner and car air-conditioning kit was provided.

It is a settled position of law that specific entry prevails over general entry and, therefore, with effect from March 20, 1990 till July 25, 1991, air-conditioner kits which comprises of various parts are classifiable against item no.8 of the said Notification.

On July 25, 1991, Explanation-2 was added to the said Notification which reads as follows:

“Explanation (2)—For the purposes of this notification, the term “car air-conditioner kit” or “car air-conditioning kit” shall exclude the kit or assembly of parts which contains automotive gas compressor with or without magnetic clutch.”

In regard to this Explanation, Mr. Verma contends that this clarifies the position that the car air-conditioning kit will not be an item of goods under item no.8 and would form part of item no.3. Relying on the words in the Explanation, namely, “shall exclude the kit or assembly of parts which contains automotive gas compressor with or without magnetic clutch.” Mr. Verma submits that as, admittedly, air-conditioner unit contains automotive gas compressor, therefore, it will not be part of item no.8. On the contrary, Mr. Sridharan contends that air-conditioning kit would remain as part of item no.8 but compressor will be chargeable to levy of duty against item no.1 thereof.

To resolve this controversy, we shall revert to the wording of the said Explanation. It provides that for purposes of the Notification, the term “car air-conditioner kit” or “car air-conditioning kit” shall exclude that kit or assembly of parts which contains automotive gas compressor with or without magnetic clutch. In our view, the Explanation has the effect of taking away the automotive gas compressor (with or without magnetic clutch) from out of the car air-conditioning kit. The car air-conditioning kit which comprises of parts of car air-conditioner remains as part of item no. 8 of the notification.

- A The Explanation cannot be so construed as to remove the term “car air-conditioner kit” or “air-conditioning kit” itself from item No. 8 of the Notification. What follows is that ‘car air-conditioning kit minus automotive gas compressor with or without magnetic clutch’ will remain in the description of goods against item no. 8 of the Notification and that the excluded part of the kit, namely, automotive gas compressor with or without magnetic clutch,
- B will cease to be part of item no.8 and will be liable to duty separately.

In this view of the matter, the order under appeal is set aside. The appeal is, accordingly, allowed as indicated above.

- C There shall be no order as to costs.

R.P.

Appeal allowed.