A COMMISSIONER OF CENTRAL EXCISE, DELHI

v.

CARRIER AIRCON LTD.

JULY 5, 2006

B [ASHOK BHAN AND DR. AR. LAKSHMANAN, JJ.]

Central Excise Tariff Act, 1985; Chapter Headings 84.15 and 84.18:

Classification—Chillers—Tariff Headings 84.15 or 84.18—Held: Primary
C *function of a chiller is to chill the water/liquid, the water/liquid so chilled put to use for air-conditioning/refrigeration etc. thereafter—End use to which the product put to use by itself cannot be determinative of the classification of the product—Tariff Entry 84.15 intended to cover the machines which are used for changing temperature and humidity—Since the chiller itself is not capable*
D *of performing such functions, it falls outside the purview of Entry 84.15—The chillers in question are cleared as separate elements and not as air-conditioning machines, hence, they could appropriately be classified under Tariff Entry 84.18 of the Act.*

The question which arose for determination in this appeal before this
E **Court was as to whether the chillers being manufactured by the assessee-respondent are classifiable under Chapter Heading 84.18 of the Schedule to the Central Tariff Act as claimed by them or under Chapter Heading 84.15 as contended by the Revenue.**

Revenue contended that the chillers are nothing but an integral part
F **of the central air-conditioning system and a complete central air-conditioning system comes into existence when chiller is fitted with the air handling unit; that more than 90% of the chillers manufactured and cleared by the assessee were being used in the commissioning of central air-conditioning plants.**

G **Assessee contended that the primary function of the chiller is only to produce chilled water/liquid and the function of the chiller comes to an end once the chilled water/liquid is produced.**

Dismissing the appeals, the Court

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HELD:1.1. It is established that the primary function of the chiller is to refrigerate or chill water/liquid irrespective of its industrial or other application to which the chilled water is put to use. [261-H; 262-A] A

Indian Aluminium Cables Ltd. v. *Union of India & Ors.*, [1985] 3 SCC 284, relied on.

1.2. Tariff Heading 84.15 covers air-conditioning machines which control and maintain temperature and humidity in closed places. The main function of air-conditioning system is to control temperature, which is not done by a chiller. A reading of the tariff entry 84.15 would show that it is intended to cover only those machines which comprise of elements for changing temperature and humidity and chillers would fall outside the purview of the said entry. [262-D-E] B C

1.3. The function of the chiller is only to chill water or bring it to a very low temperature, and it is the air-handling unit having an independent and distinct function which produces the effect of air-conditioning, controlling the temperature and the humidity. The chiller itself does not do any air-conditioning as it is designed only to refrigerate or produce chilled water/liquid. [263-E-F] D

1.4. The use of the chillers in the air-conditioning system would not take away the primary or basic function of the chiller which is to produce chilled water by using a refrigerating circuit. Accordingly, the chillers in question shall fall under specific Heading 84.18 of the Tariff Act. This view is supported by the explanatory notes of H.S.N. below Heading 84.15. Since chillers manufactured by the respondent are cleared as separate elements and not as air-conditioning machine, therefore, the same have to be classified under tariff entry 84.18 as refrigerating or freezing equipments as the basic function of the chillers is to chill the water or liquid. Chillers manufactured by the respondent cannot be classified under Heading 84.15 simply because 90% of the chillers manufactured by the respondent were being used in the commissioning of central air-conditioning plant. End use to which the product manufactured is put to cannot determine the classification of the product when the product manufactured falls under a specific Heading. [262-G-H; 263-A-B-C] E F G

1.5. Chillers in the domestic and international trade parlance are known as refrigerating equipment. The trade identifies chillers as refrigerating machinery on the basis of its function of chilling water using refrigerating circuit. Even by testing it from the commercial parlance test H

as well the chillers would not be classifiable under Chapter Heading 84.15. [263-C-D]

2. Since the Tribunal decided the case on merits it did not record any finding regarding invoking of the extended period of limitation under Section IIA of the Act. Agreeing with the view taken by the Tribunal on merits, there is no need for this Court to go into the question regarding the extended period of limitation. [263-D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3914 of 2001.

From the Order No. 1959/2000 dated 26.9.2000 of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/2101/2000-B.

WITH

C.A. Nos. 8418-8419 of 2001.

C.A. Nos. 4715-4717 of 2002.

C.A. No. 2898 of 2005.

K. Radhakrishnan, Joseph Vellapally, K. Swami, Vikas Bansal for P. Parmeswaran, Ashok Mathur, Rakesh Ojha, Arindam Ghose, Ragvesh Singh, Kumar Vivek Vibhu, Indra Sawhney, Gopal Jain, Ruby Singh Ahuja, Debmalya Banerjee for Manik Karanjawala, Pratap Venugopal, Surekha Raman and Ragvesh Singh for K.J. John & Co. for the appearing parties.

The Judgment of the Court was delivered by

BHAN, J. This judgment shall dispose off Civil Appeal Nos. 3914 of 2001, 8418-8419 of 2001, 4715-4717 of 2002 and 2898 of 2005 by a common order as the point involved in all these appeals is the same.

Facts are taken from Civil Appeal No.3914 of 2001. The point which calls for consideration is as to:

"Whether the chillers manufactured by M/s. Carrier Aircon Limited (respondent herein) are classifiable under Chapter Heading 84.18 of the Schedule to the Central Tariff Act (for short "the Act") as claimed by them or under Chapter Heading 84.15 as contended by the Revenue?"

M/s. Carrier Aircon Limited (respondent herein) is engaged in the manufacture of chillers besides other goods i.e. room air-conditioners, air handling units, gas compressors, radiators for central heating and parts of aforesaid goods. Respondent classified the chillers manufactured by it as refrigerating and freezing equipments under sub-heading No.8418.10 of the First Schedule to the Central Excise Tariff Act, 1985 (for short the "Tariff Act"). The classification list was accepted by the Department.

Commissioner of Central Excise, Central Excise Commissionarate, Delhi-III, issued a show cause notice dated 3.8.1999 to the respondent requiring them to state their case, *vis-a-vis*, the department's proposal to classify their product "chiller" under Chapter Heading 84.15 instead of Chapter Heading 84.18 on the grounds mentioned therein. It was alleged in the notice that from the end use of the "chillers" being manufactured by the respondent, it was evident that the said "chillers" were nothing but an integral part of the centrally air-conditioning system. That complete central air-conditioning plant comes into existence when the said chiller is fitted with air handling unit or fan coil unit, ducting, piping and pumps etc,. On perusal of the description of 'chillers' as submitted by the respondent *vis-a-vis* the description of goods available under Chapter Heading 84.18 it was observed that the description and functioning of the chillers was not covered under Chapter Heading 84.18. During the course of investigation, statements of Shri R.K. Verma, AGM (CBU) who is a Mechanical Engineer, working with the respondent and Shri A.K. Mehra, B.Sc. Engineering Electrical, working as a Manager (Mechanical) dealing with designs of mechanical engineering in M/s. Jacob H & G Ltd., were recorded.

The Department on perusal of the statements dated 31.12.1998 of Shri R.K. Verma and statement dated 27.1.1999 of Shri A.K. Mehra, the literature/ brochure available on the subject and the purchase orders placed by various customers came to the conclusion that the respondent erred in classifying the chillers under heading 84.18 as 'other refrigerating or freezing equipments', as the majority of the customers (more than 90%) had placed their purchase orders for supplying of chillers of various capacities along with air handling units or fan coil units and other electrical accessories required for use in air-conditioning purposes; that chillers when used in combination with AHU connected with chiller water system cools and dehumidifies the air and there is no difference between this system and central air-conditioning system as the effect will be the same. That the main application of both types of chillers is for air-conditioning of the various types of large buildings/establishments

A and that the chillers are one of the essential components of air-conditioning systems. That 'other use' of chillers without AHU/FCU for control of temperature (other than air-conditioning system) in various industrial applications is very little i.e. 5 to 10% of the total application. That the respondent had willfully suppressed the material facts of receipt of purchase orders of said chillers for air-conditioning equipments and use of chillers in B combination with AHUs/FCUs for the purpose of air-conditioning system of star hotels, auditoriums, large office complexes, big hospitals and other large establishments from the department with a *malafide* intent to evade appropriate payment of duty in as much as they never informed the department by way of any sort of correspondence that the purchase orders were placed by the C customers for air-conditioning equipments comprising of chillers of required capacities, air handling units or fan coil units etc. The respondent was called upon to show cause to the Commissioner of Central Excise Delhi-III within 30 days of the receipt of the notice, as to why:

1. The chillers should not be classified under sub-heading D No.8415.00 instead of sub-heading No. 8418.00 of the First Schedule of the Central Excise Tariff Act, 1985;

2. Central Excise Duty of Rs.1,84,62,136/- (Rupees One Crore Eighty Four Lac Sixty Two Thousand One Hundred Thirty Six only) short-paid on 249 number of chillers collectively valued at E Rs.10,79,55,623/- cleared under sub-heading No. 8418.00 instead of 8415.00 (details of which are given in Annexure 6 to this Show Cause Notice) during the period 01.08.94 to 30.9.96 and April 1997, January 1998 should not be demanded from them under rule 9(2) of the Central Excise Rules, 1944 read with Section 11A of the Central Excise Act, 1944;

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3. Provisions of extended time limit of five years under proviso to Section 11A of the Central Excise Act, 1944 should not be invoked for the extended period in view of suppression and misrepresentation of facts as discussed above;

G 4. Penalty under Section 11AC of the Central Excise Act, 1944 should not be imposed upon the party; and

5. Interest should not be charged from the party under Section 11 AB of the Central Excise Act, 1944.

The respondent in its reply *inter alia* briefly submitted that the entire H proceedings contemplated under the impugned show cause notice invoking

the extended period of limitation of 5 years under the proviso to Section 11A of the Act was without jurisdiction and no valid proceedings could subsist thereunder. It was submitted that they were manufacturing and clearing the chillers which are also known in trade parlance as refrigerating machinery for which classification/declaration list had been accepted by the department. On merits, it was submitted that it was common knowledge that chillers and cooling towers are generally used in relation to central air-conditioning plants for air-conditioning of large areas such as hotels, airports, Govt. offices/ departments and that the facts which are within the common knowledge ought to be presumed in law to be within the knowledge of the excise department; the allegation made by the department that end use of the chiller is for the air-conditioning purposes and hence the chiller must be treated as part of the air-conditioner, was erroneous in law; that the process of manufacture of a product and the end use to which it is put cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Tariff Act; that the liquid chiller has many applications in industry such as cooling the rolls used in manufacture of polyester films; for providing chilled water in the processing of colour picture tubes; to provide chilled water to cool the plant in paint shops in automobile manufacturing industry; to provide chilled water/air to cool the equipments in nuclear science centre; tool manufacturing companies; food industry; spot welding industry; textile manufacturing industry and in the chemical industry. That in all these applications and even in the central air-conditioning system, the function of chiller is understood to be to chill the liquid. As per Section 2(a) of Section XVI of the Tariff Act the chiller when cleared separately which specifically falls under Chapter Heading No. 84.18 cannot by any stretch of imagination be treated as part of an air-conditioner on the same analogy as fans used in the air-conditioner are classified at the time of clearance as an electric fan and not as a part of air-conditioner. That the chiller itself does not do any air-conditioning as it is designed only to refrigerate or produce chilled water/ liquid. In support of its submission, the respondent relied upon certain judgments as well as the Board's circulars.

The Commissioner, Central Excise, in his order-in-original No. 9/2000 dated 24.3.2000 held that the chillers are classifiable under tariff heading No. 84.15 and not under tariff heading No. 84.18 as had been claimed by the respondent. It was held that the chillers are nothing but an integral part of the air-conditioning system. A complete central air-conditioning system comes into existence when chiller is fitted with air handling unit or with fan coil unit, ducting, piping, pumps etc. and no central air-conditioning plant can

A come into existence without a chiller. Applying the principal of 'end use' it was held that since more than 90% of the chillers manufactured and cleared by the respondent had been used in the commissioning of central air-conditioning plants and hardly 5 to 10% were put to application for other uses, the chillers were classifiable under heading 84.15 as parts of air-conditioning machine. Extended period of limitation was invoked as it was B found that the respondent was guilty of suppression of facts. Accordingly, the demand of differential duty of Rs.1,84,62,136/- short paid on 249 chillers valued at Rs.10,79,55,623/- was confirmed and ordered to be recovered under Rule 9(2) read with Section 11A. Penalty of Rs.1,84,62,136/- was imposed under Section 11AC of the Act. Interest was also ordered to be charged under C Section 11AB of the Act.

Being aggrieved by the orders passed by the authority-in-original, respondent filed appeal before the Central Excise and Gold (Control) Appellate Tribunal (for short "the Tribunal"). The Tribunal by the impugned order has accepted the appeal, set aside the order-in-original and held that the end use D of "chillers" in the air-conditioning system would not take away the primary or basic function of the chillers which is to produce chilled water by using a refrigeration circuit and the same shall fall under Chapter Heading 84.18 of the Tariff Act.

E Aggrieved by the orders passed by the Tribunal, the Department has filed the present appeals.

Shri K. Radhakrishnan, learned senior advocate appearing for the Revenue submitted that the chillers are nothing but an integral part of the central air-conditioning system and a complete central air-conditioning system F comes into existence when chiller is fitted with the air handling unit or with fan coil unit, ducting, piping, pumps etc. It was emphasized by him that more than 90% of the chillers manufactured and cleared by the respondent were used in the commissioning of central air-conditioning plants. On the other hand, counsel appearing for the assessee contended that the primary function of the chiller is only to produce chilled water/liquid and the function of the G chiller comes to an end once the chilled water/liquid is produced.

Rival tariff headings read as under:-

"84.15 Air-conditioning machines, comprising a motor driven fan and elements for changing the temperature and humidity, including H those machines in which the humidity cannot be separately

regulated." A

"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."

The chilled water produced by the chiller is admittedly in turn being used in various industrial applications namely: B

(i) In polyester film processing, chilled water produced by chiller is used for cooling the rolls used in the manufacture of polyester films.

(ii) The chilled water produced by chiller is used in the processing of colour picture tubes. C

(iii) For the painting of cars, a process is used whereby the entire car body is charged negative and dipped in paint charged positive. During the process, a lot of heat is generated and the chiller is used here for producing chilled water, which cools the paint continuously. D

(iv) Nuclear science centre is engaged in cryo-generator research wherein equipment like ion accelerator is used to bombard materials and study their behaviour. Chiller is used in the process to produce chilled water, which cools the equipment round the clock. E

(v) Chilled water produced by the chiller is used to cool manufacturing equipment.

(vi) Chillers are used for the purpose of process cooling in food industry. F

(vii) Metals subjected to welding are chilled with the help of chilled water produced by the chiller.

(viii) Chilled water produced by chiller is used in flawless weaving in textile industry. G

(ix) Chillers are being supplied for use in chemical process industry.

All these facts have been admitted by the adjudicating authority in its order-in-original.

From the above, it is established that the primary function of the chiller H

A is to refrigerate or chill water/liquid irrespective of the industrial or other application which the chilled water is put to. Air-conditioning system is just one amongst the various industrial applications in relation to which chillers are used. Only because 90% of the chillers manufactured by the respondent are used in the air-conditioning system cannot be the basis for classification of the chillers as parts of air-conditioning system classifiable under heading B 84.15.

End use to which the product is put to by itself cannot be determinative of the classification of the product. See *Indian Aluminium Cables Ltd.* v. *Union of India and Ors.*, [1985] 3 SCC 284. There are a number of factors C which have to be taken into consideration for determining the classification of a product. For the purposes of classification the relevant factors *inter alia* are statutory fiscal entry, the basic character, function and use of the goods. When a commodity falls within a tariff entry by virtue of the purpose for which it is put to, the end use to which the product is put to, cannot determine the classification of that product.

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Tariff heading 84.15 covers air-conditioning machines which control and maintain temperature and humidity in closed places. The main function of air-conditioning system is to control temperature, which is not done by a chiller. A reading of the tariff entry 84.15 would show that it is intended to cover only those machines which comprise of elements for changing E temperature and humidity and chillers would fall outside the purview of the said entry. The function of the chiller is only to chill water or bring it to a very low temperature, and it is the air handling unit having an independent and distinct function which produces the effect of air-conditioning, controlling the temperature and the humidity. The chiller itself does not do any air- F conditioning as it is designed only to refrigerate or produce chilled water/ liquid.

Revenue is classifying the impugned chillers as parts of the air-conditioning system as the same is used in central air-conditioning plant of star hotels, airport, hospital, large office complexes and large establishments. G The use of the chillers in the air-conditioning system would not take away the primary or basic function of the chiller which is to produce chilled water by using a refrigerating circuit. Heading 84.18 covers refrigerators, freezers and other refrigerating or freezing equipment. Accordingly, the chillers in question shall fall under specific heading 84.18 of the Tariff Act. This view is supported by the explanatory notes of H.S.N. below heading 84.15. HSN H

provides that "If presented as separate elements, the components of air-conditioning machines are classified in accordance with the provisions of Note (2)(a) to Section XVI (heading 84.14, 84.18, 84.19, 84.21, 84.79, etc)....." 'Chillers' manufactured by the respondent are cleared as separate elements and not as air-conditioning machine, therefore, the same have to be classified under tariff entry 84.18 as refrigerating or freezing equipments as the basic function of the chillers is to chill the water or liquid. Chillers manufactured by the respondent cannot be classified under heading 84.15 simply because 90% of the chillers manufactured by the respondent were being used in the commissioning of central air-conditioning plant. End use to which the product manufactured is put to, cannot determine the classification of the product when the product manufactured falls under a specific heading.

Chillers in the domestic and international trade parlance are known as refrigerating equipment. The trade identifies chillers as refrigerating machinery on the basis of its function of chilling water using refrigerating circuit. Even by testing it from the commercial parlance test as well the chillers would not be classifiable under Chapter Heading 84.15.

Since the Tribunal decided the case on merits it did not record any finding regarding invoking of the extended period of limitation under Section 11A. Since we are agreeing with the view taken by the Tribunal on merits, there is no need for us as well to go into the question regarding the extended period of limitation.

For the reasons recorded above, we do not find any merit in these appeals and dismiss the same leaving the parties to bear their own costs.

S.K.S. Appeals dismissed.