IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NOS: C/830 to 878/2011

[Arising out of Order-in-Appeal No: 431 to 593 (GR.V-A)/2011 (JNCH)/IMP-356 to 518 dated 28/09/2011 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Hitachi Home & Life Solution (India) Ltd … ***Appellant***

versus

Commissioner of Customs (Import)
Nhava Sheva ***…Respondent***

Appearance:

None for appellant

Ms PV Shekhar, Joint Commissioner (AR) for respondent

CORAM:

Hon'ble Dr. D. M. Misra, Member (Judicial)
Hon'ble Shri C. J. Mathew, Member (Technical)

Date of hearing: 11/10/2018
Date of decision: 11/10/2018

ORDER NO: A/87666-87714 / 2018

Per: Dr. D.M. Misra

These appeals are filed against Order-in-Appeal No: 431 to 593 (GR.V-A)/2011 (JNCH)/IMP-356 to 518 dated 28/09/2011 passed by the Commissioner of Customs (Appeals), Mumbai – II. Since the issue involved is common these are taken up together for disposal.

2. Briefly stated, the facts are that the appellant had imported frost-free refrigerators, consisting of freezer portion and refrigerator portion having separate external doors for the two portions, from Thailand and filed bill of entry declaring its classification under Chapter sub-heading 8418 21 and claimed exemption under Notification No. 85/2004-Cus dated 31st August 2004. The adjudicating authority assessed the goods denying the benefit of the said exemption notification. Aggrieved by the said order, the appellant filed appeals before the Learned Commissioner (Appeals) who in turn rejected their appeals. Hence the present appeals.

3. None present for the appellants, heard the Learned Authorised Representative.

4. Learned Authorised Representative for Revenue submits that the issue is no more *res integra* and is covered by the judgment of this Tribunal in their own case reported as *Hitachi Home & Life Solution Ltd. v. Commissioner of Customs (Import), Nhava Sheva* [2012 (285) ELT 504 (Tri. Mumbai)] which has been subsequently followed in their own case reported as [2014 (300) ELT 457 (Tri.Mumbai)]. The appeal carried against the aforesaid judgments of this Tribunal to Supreme Court resulted into dismissal of the appeals by the Hon’ble

Supreme Court reported as *Hitachi Home & Life Solution Ltd v. Commissioner of Customs (Import), Nhava Sheva* [2014 (310) ELT A87 (SC)]. It is her contention that the present appeals are also liable for dismissal.

5. We have carefully considered the submissions made in the grounds of appeal and that of the Learned Authorised Representative for Revenue. We find that this Tribunal, after analyzing the relevant entries and the conditions of the exemption notification, held that benefit of exemption Notification No. 85/2004-Cus dated 31st August 2004-Cus cannot be extended to the appellant. It has observed as:

> *5.13 If we apply the above principle to the facts of the present case, without any iota of doubt, it can be concluded that the most appropriate tariff nomenclature adopted in the Customs Tariff in respect of the impugned goods is "Combined refrigerator-freezers, fitted with separate external doors" which is classifiable under CTH 8418 10. Accordingly we hold that the correct classification of the goods under importation in the instant case is CTH 8418 10 90 and not CTH 8418 21 00. Consequently, the appellant is not eligible for the benefit of Notification No. 85/2004-Cus., dated 31-8-2004.*
>
> *5.14 The Central Board of Excise & Customs had issued a Circular No. 23/2008-Cus., dated 29-12-2008 regarding classification of combined refrigerator freezer fitted with separate external doors. The relevant portion from the said circular is reproduced below :-*
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> > *"3. The matter has been examined by the Board. For the*

> *purpose of classification of 'Combined refrigerator-frezer with separate external doors' it is stated that sub-heading 8418 10 covers refrigerators which are combined with freezers and have separate doors, whereas, sub-heading 8418 21 covers only refrigerators without separate freezers and separate doors. Further sub-heading 8418 30 covers only "freezers". Therefore, a 'combined refrigerator-freezer with separate external doors' merits classification under sub-heading 8418 10. This view is also supported by HS classification. Further, 'combined refrigerator-freezer with separate external doors of household type' is appropriately classifiable under tariff item 841810.90 as the other tariff entry 8418 10 10 covers such refrigerators of commercial type only.*
>
> *4. In view of the above, I am directed to clarify that the classification of 'combined refrigerator-freezer with separate external doors' would be under sub-heading 8418.10 and not under 8418.21 as was being followed by certain customs field formations. Accordingly these goods are not covered under sl. No. 50 of Notification No. 85/2004-Cus., dated 31-8-2004.".*

5.15 Though the circular issued by the Board is not binding on this Tribunal, it has a great weightage for the reason that C.B.E. & C. is the Apex body implementing customs laws in this country and has the responsibility of enforcing the Free Trade agreement between India and Thailand contained in Notification No. 85/2004-Cus. Therefore, the views expressed in the circular has to be given due consideration. It is a well-settled principle of interpretation that "courts in construing a statute will give much weight to the interpretation put upon it at the time of its enactment by those whose duty has been to construe, execute and apply the same enactment" [as held by the Hon'ble Apex Court in Collector of Central Excise, Guntur v. Andhra Sugars Ltd. - AIR 1989 SC 625 = 1988 (38) E.L.T. 564 (S.C.)]. The same position was affirmed by the Hon'ble Apex Court in the case of K.P. Varghese v. ITO, Ernakulam [(1982) 1 SCR 629] wherein it was held that "the meaning ascribed by the authority issuing the notification is a good guide of a contemporaneous exposition of the position of law".

6. We do not find any reason in not following the aforesaid precedent which has been upheld by the Hon'ble Supreme Court dismissing the appeal against the said judgement. Consequently, the appeals are dismissed.

(Pronounced in Court)

(C J Mathew)	**(Dr. D.M. Misra)**
Member (Technical)	***Member (Judicial)***

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