

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86899 OF 2017

[Arising out of Order-in-Original No: 186/2016-17/CC/NS-I/JNCH dated 7th March 2017 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

Daikin Air-Conditioning India Pvt Ltd
12th Floor, Building No. 9, Tower 'A', DLF Cyber City
DLF Phase – III, Gurgaon 122 002

... Appellant

versus

Principal Commissioner of Customs (NS-I)
JNCH, Nhava Sheva, Dist: Raigad - 400707

...Respondent

APPEARANCE:

Shri T Vishwanathan, Advocate for the appellant

Shri Ramesh Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

FINAL ORDER NO: A/85765 / 2020

DATE OF HEARING:	20/02/2020
DATE OF DECISION:	11/09/2020

PER: C J MATHEW

In this appeal of M/s Daikin Air-conditioning India Ltd against
order-in-original no. 186/2016-17/CC/NS-I/JNCH dated 7th March

2017 of Principal Commissioner of Customs (NS-I), Jawaharlal Nehru Custom House, Nhava Sheva, Mumbai, it is the revised classification, adopted by customs authorities on the import of 'split air-conditioners', with consequent denial of exemption from basic customs duty that is in dispute. The impugned order has directed recovery of ₹ 3,46,64,737, as differential duty under section 28 of Customs Act, 1962, besides imposing penalty of like amount under section 114 A of Customs Act, 1962. The exemption that was denied is available to all goods, corresponding to sub-heading no. 841510 of First Schedule Customs Tariff Act, 1975 at serial no. 49 in notification no. 85/2004-Cus dated 31st August 2004, on import from Thailand. The adjudicating authority re-determined the classification under sub-heading no. 841581 of First Schedule to Customs Tariff Act, 1975 and assigned the rate of duty corresponding to one of the two tariff items, distinguished by the benchmark of cooling capacity, therein.

2. The impugned goods of Thai origin had been imported against 220 bills of entry filed at Nhava Sheva, Chennai and Kolkata between 2009-10 and 2013-14, commencing with the earliest consignment on 27th May 2009 and the last in July 2013, with declared assessable value of ₹ 33,71,77,094 and cleared on payment of duty of ₹ 5,38,43,436. While 210 consignments were dealt with at Nhava Sheva, Chennai and Kolkata dealt with nine consignments and a single consignment respectively. It is seen from the records that 25 consignments had been

imported in 2009-10 and, in the succeeding years, 75, 53, 58 and 9 respectively. Learned Counsel for appellant submits that the proceedings were initiated with intent to deny entitlement to the exemption notification. In support of this contention, he placed before us the records of import of 'split air-conditioners' from Thailand in November 2000 and the acceptance therein of declaration of sub-heading no. 841510 of First Schedule to Customs Tariff Act, 1975. He also drew attention to two other bills of entry of November 2008 for the import of 'split air-conditioners' from Thailand, comprising models with cooling facility alone and with both heating and cooling capability, in which the declaration of classification under tariff item no. 84151010 had been accepted without demur. It occurs to us that there may be some element of truth in this contention as the premises of the appellant had been searched in July 2013 and the misclassification could well have been rectified by immediate action under section 28 of Customs Act, 1962 instead of initiating proceedings only to those in which basic customs duty had been claimed for exemption. The exercise of classification is not undertaken with the objective of revenue maximization but is intended to ensure uniformity of treatment across different ports of import and to press into service the most appropriate rate of duty for assessment.

3. At times, enthusiastic pursuit of alleged irregularities blindsides investigators to the policy governing international trade. The

proceedings that were commenced culminated in the denial of eligibility for exemption under the notification issued for implementation of a bilateral agreement between two sovereign authorities which, conceivably, could not have restricted itself to the impugned goods. The notice proceeded on the proposition that the exemption notification is not intended for ‘split air-conditioners’ equipped both to cool and heat. Taking the proposition to its logical conclusion, it is indeed a matter for conjecture that the representatives of the sovereign authorities intended that trade in ‘split air-conditioners’, that could only cool, should be encouraged; considering the extremes of temperature experienced in most parts of India, that offspring of the proposition appears far-fetched. Combined with the architecture in heading no. 8415 of First Schedule to Customs Tariff Act, 1975 which describes ‘split systems’ and ‘split air-conditioners’ in separate, and mutually exclusive, tariff items – and it being blasphemous, indeed, to attribute the substitution therein to casual semantic jugglery - and a tariff description that envisages lack of ‘refrigerating unit’- the expression, in our speculation, that prompted the investigators to consider the proposed classification premising upon one of the components of ‘split air-conditioners’ to be ‘refrigerating unit’- which no air-conditioner can, conceivably, do without, the investigators should have been alerted to the scope of the sub-headings below the four digit level. The First Schedule to Customs Tariff Act,

1975 is not to be attended to with casualness of reading a thriller but to be referred with complete comprehension of the statutory provisions, the General Rules for the Interpretation of Import Tariff, the General Explanatory Notes to Import Tariff and the Additional Notes. It is by disregard of these vital auxiliaries in deliberating on classification in the First Schedule that misadventures occur.

4. In the context of classification sought by an importer, it is for the customs authorities to assume the onus of justifying discard of the claimed classification and of justifying the applicability of the proposed classification. In doing so, the inexorable logic of its architecture, in its entirety as well as in the several groupings within the chapters, can be overlooked only at the cost of imperiling the adopted classification.

5. Before proceeding to evaluate the findings in the impugned order and the rival submissions, we turn attention to the branching system that pervades the classification hierarchy. It is the headings within the chapter that is mandated as the starting block for determination of classification. The rule of preferring specific description over the general description is to be brought into play only in the event of all but one among possible alternatives having to be eliminated and, with the assessment, or reassessment, as the case may be, statutorily devolving on the proper officer, the susceptibility to alternative headings should, in the first place, be acceptable to the assessing officer. It is not intended

to be invoked for ‘breaking the tie’ on the claim of an importer for a particular classification which is to be discarded first before any alternative can be short-listed. Furthermore, rule 6 mandates that

‘sub-headings of a heading shall be determined according to the terms of those sub headings... on the understanding that only sub-headings at the same level are comparable.’

to direct that the order of fitment shall be identification of a heading, restricting the next evaluation to sub-headings within the identified heading and selection of the tariff item from within the same level of sub-headings. Consequently, the description, corresponding to a sub-heading or tariff item, cannot be proceeded to for adoption without fitment within the heading under which it is grouped. The General Explanatory Notes elaborate upon the relevance of ‘-’, ‘- -’, ‘- - -’ etc with the same purpose. The transition from the heading to the tariff item in the Additional Notes makes this crystal clear.

6. Corresponding to the description

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

heading no. 8415 branches out into four sub-headings at the 6 digit level and distinguished by ‘-’. We need not concern ourselves with the last of these which corresponds to the description ‘parts’; neither are we

concerned with the second of these though it may offer some enlightenment on the sequencing. Of the two relevant sub-headings, the later is residuary, as indicated by the description ‘other:’, without accompanying digits but comprising of three sub-headings at the six digit level and within each of which, at the eight digit level, is segregation as ‘split air-conditioners of two tons and above’ and ‘other’ indicating intention of distinguishment, according to capacity with single benchmark, for

‘air conditioning machines, comprising a motor driven fan and elements for changing the temperature and humidity’

- *‘incorporating refrigerant unit and a valve for reversal of the cooling or heat cycle (reversible heat pumps):’*
- *‘incorporating the refrigerating unit:’*
- *‘not incorporating a refrigerating unit:’*

It also appears from this architecture that ‘split system’ is not the same as ‘split air-conditioner’ which is to be considered, given that all of these are branched under the residuary ‘others’, only after elimination of the description, corresponding to sub- heading no. 841510, which is

‘Of a kind designed to be fixed to a window - ‘, wall, ceiling or floor, self-contained or “split-system”;

comprising of ‘split-system’ and the residuary ‘others’ within it, for conformity with the goods. Thus, it was incumbent upon customs authorities to record its understanding of ‘split system’ and the

inapplicability thereof to the impugned goods. Without undertaking such an exercise, proceeding to the adopted tariff items within the residuary among ‘air-conditioning machines’ merely by the magnetic allure of the existence of ‘split air-conditioners’ as tariff items is not legally tenable.

7. The impugned order takes note that the imported goods were ‘air conditioners ductless split’, with cooling function as well as with heating and cooling capability, and premising that ‘refrigerant/heating element unit with a valve for reversal of the cooling or heat cycle, *i.e.*, reversible heat pump, was present in the latter. The uncanny replication of the description corresponding to sub-heading no. 841581 does not appear to have emanated from any examination of the impugned goods or catalogues pertaining to those but from averments in the statements recorded from some of the officials of the appellant company. The technical exposition by the adjudicating authority does not appear to have been sourced from the show cause notice and we find nothing on record attributing authenticity and expertise to that. Of the 33 models that were cleared by the appellant, only three have VRV as the description of the outdoor unit; nevertheless, as pointed out by Learned Counsel, the technical details of these appear to have been used for determination of the components of all the goods.

8. We take note that the conclusion of the adjudicating authority in

‘19.3.4.2 I find that the scope of Chapter sub- heading 8415 10 covers air conditioning machines of what window or wall type, self-contained or “as split system”. It is also a matter of fact that explanatory notes to heading 8415 specified that they may be in the form of “split system which operate when connected together, i.e a condenser unit or external installation plus an evaporator unit for internal installation It further specified that they are ductless and utilise a separate evaporator for each area be air conditioned. It was never under dispute that the ACs with have both cooling and heating capacity and are ductless. Thus it is evident that the said air conditioners are classified under Heading 80 415 without any doubt. However, the issue is their further classification at the sub-heading and tariff item level. The Explanatory Notes to the sub- heading 8415. 10 clearly emphasises upon the mandatory element of a separate evaporator for each group. However, I observe that the same is silent on the presence of one condenser and one evaporator, From the scope of this sub-heading and the explanatory notes above, it is seen that the impugned items are not expressly excluded from this sub-heading. However, to derive at the correct classification, the scope of the sub-heading 8415.81 too, needs to be analysed.’

which, when concatenated with the General Rules for Interpretation and the Additional Notes, appears to be inherently self-contradictory as resort cannot be had to a sub-heading under the residuary description without the goods having been found to be excludible from the declared sub-heading. A further observation of the adjudicating authority that

‘19.3.5 Now, coming to sub- heading 841581, it is seen that the scope of sub heading 841581, specifies that conditioning machine incorporating a refrigerant unit and a valve for

reversal of the cooling and heat cycle (reversible heat bonds) are classifiable under the said sub-heading. It is a matter of fact that the impugned goods have both cooling and heating capacity. To elaborate, these air conditioners incorporate a refrigerating unit and a valve for reversal of the cooling/heat cycle (reversible heat pumps) and perform a dual function of heating and cooling the premises, thereby fulfilling the conditions of sub-heading 8415.81 therefore, the impugned items are also classifiable under sub- heading 8415.81.'

does not even stop to consider the source of authentication of the components that make up the impugned goods. It would, therefore, appear that a contingency is being insinuated to prepare the ground for invoking of the rule mandating the selection of the specific over the general. In the process, it would appear that the adjudicating authority has committed itself to a course of action that is entirely at variance with the requirement that comparison should be undertaken at similar levels. The comparison for the more specific at the eight digit level without comparisons for the most specific that the six digit level is not tenable.

9. Learned Counsel drew attention to

'19.3.8 I find that as discussed above that the goods i.e. heating and cooling feature split air-conditioners appears to be classifiable under tariff item 84151010as well as under tariff item 84158110 but the basic difference is the refrigerant/and valve control mechanism for the regulation of refrigerant in the said type of air conditioning machines/systems. I notice that it is well-settled position and as per the accepted canons,

classification of goods are to be determined by application of the General Rules for the Interpretation of Import Tariff (GIR as) of the First Schedule to the Customs Tariff Act, 1975, which are extracted below:’

xxx

Accordingly, I hold that the impugned RAC conditioners are classifiable under Chapter sub heading 841581.... In view of the foregoing, the classification of different types of split airconditioners (RAC), under the appropriate headings, in terms of the technical specifications wherein the Variable Refrigerant Volume/Variable refrigerant Flow is available are appropriately classifiable under tariff head of 84158110 and 84158190....’

and submitted that the Explanatory Notes to the Harmonised System of Nomenclature and, in particular, the subheading notes pertaining to 8415.10 which, while excluding ‘ducted central air-conditioning systems’, elaborates upon the “split-system” to be ‘ductless and utilise a separate evaporator for each area to be air-conditioned’ and self-contained type air conditioners be in in ‘the form of single units encompassing all the required elements and being self-contained.’ It was also pointed out that the Interim Rules of Origin for Preferential Tariff Concessions for Trade between India and Thailand issued on 31st August 2004, at serial no. 12 of Annexure A, describes conditions against the description which matches the sub-heading notes *supra*.

10. Learned Authorized Representative referred to the Explanatory

Notes to the Harmonised System of Nomenclatures which explained the scope of the heading as

'covers, inter alia, reversible heat pumps designed, through a single system fitted with a valve for reversal of the cooling/heat cycle, to perform the dual function of heating and cooling premises. In the cooling cycle, the reversing valve directs the flow of hot, high-pressure vapour the outdoor coil where the heat released during condensation is fanned into the outdoor air and then compressed refrigerant flows into an indoor coil where it vaporizes and absorbs heat and cool the hair that is driven around the premises by a fan. In the heating cycle, the shift of the valve for reversal of the cooling/heat cycle causes the refrigerant flow to reverse so that the heat is released inside the premises.'

11. Referring to the decision of the Hon'ble Supreme Court in *Motiram Tolaram v. Union of India [1999 (112) ELT 749 (SC)]*, it was argued by Learned Authorised Representative that the onus of establishing compliance with eligibility condition rested with the assessee. According to him, a similar exposition of law was laid down in *Mysore Metal Industries v. Collector of Customs, Bombay [1988 (36) ELT 369 (SC)]*.

12. It would appear that the Explanatory Notes to the Harmonised System of Nomenclature has not been properly appreciated by the adjudicating authority. The extract cited by Learned Authorized Representative does not advance the cause of the impugned order as that pertains to the heading itself and, in the absence of, evidence that

the impugned goods incorporate a refrigerant unit with reversible heat pump, the procedure for elimination of incorrect description must be in compliance with the General Rules for Interpretation of the Import Tariff.

13. From heading no. 8415 of First Schedule to the Customs Tariff Act, 1975, it is seen that air conditioning machines comprise of a motor driven fan and elements for controlling humidity and temperature. Generally, and more particularly in the retail segment, such machines are either of 'window or self-contained' or 'split system' types. There are several other equipment which are designed for larger spaces and for applications that go beyond residential or commercial. In the structuring of the sub-headings, emphasis is placed on the 'split system' and, by default, the 'window' types. All other air-conditioning equipment are relegated to the residuary categorization and it is within such that 'split air-conditioners' finds deployment. From this, it can be inferred that 'split system' air conditioning machines and 'split air-conditioners' are distinct. Neither has the show cause notice nor the adjudicating authority forayed an elaboration of either; that these existed at the eight digit level under different sub-headings did not appear to have impressed itself, let alone the need for appreciating the distinction on the adjudicating authority. That, at the six digit level of comparability, accompanied, as they are, by '- -', and not '- - -', attaching to the claimed tariff item, the segregation, ranging from the

presence of 'refrigerant unit with heat reversible pump' to an incorporation of none with the existence of 'refrigerant unit' alone in between, should make it apparent, considering every air conditioning machine to be capable of cooling, that the 'refrigerant unit' referred to in sub-headings under the residuary branch of dichotomy is not the normal cooling system but a special feature. This aspect appears to have been lost sight of in the impugned order prompted, probably, by the intent to proceed directly to an ostensibly conforming description. The additional feature, whose presence or absence, determines the sub-heading within the residuary category, has not been established as incorporated in the impugned goods. In the absence of such, customs authorities are not enabled to proceed to the tariff item below the sub-heading. The impugned order is flawed for that reason.

14. The classification declared by the appellant at the time of import corresponds to the description of 'split system' and the scope of 'split system' is elaborated in the subheading notes in the Explanatory Notes to the Harmonised System of Nomenclature. From this, it can be inferred that the description corresponding to sub-heading 841510 is intended for 'window' and 'split system' air-conditioning machines. In this dispute, we are not concerned with the former and it merely suffices to note that the residuary description, corresponding to tariff item no. 84151090, would cover all 'window' type air conditioners. As far as 'split systems' are concerned, the segregation of the system into an

external condenser and an internal evaporator is its most basic characteristic. If the presumption of cooling capability existing only with refrigerant units, as it appears in the impugned order, is unquestioned, the source of cooling in the goods, to which tariff item no. 84151010 applies, appears to have been glossed over deliberately. Undoubtedly, every article under heading no. 8415 has to have a cooling facility. Nevertheless, the adjudicating authority set out with the assumption that, irrespective of the cooling equipment in 'split systems', the cooling system in the impugned goods was a refrigerant unit. Neither is there any ground for such supposition in the show cause notice nor is there reason to conclude that the cooling source in the 'split system' was absent in the impugned goods and substituted by another. There is no descriptive restriction in sub-heading no. 841510 to conclude that heating capability is not intended for coverage by that tariff entry. The impugned order has failed to exclude applicability of description of 'split systems' to the impugned goods which would have entailed some knowledge of what that is.

15. 'Split systems' are air conditioners that have two parts and these operate together to cool space. Likewise, it may heat space also without compromising conformity with the description corresponding to heading no. 84151010 of the First Schedule to Customs Tariff Act, 1975. It is only by exclusion from this description that the impugned order could have attempted an alternative classification. The General

Rules of Interpretation, with emphasis on hierarchical elimination of non-conformity, precluded classification of the impugned goods under the general residuary description when conformity with the specific is not established as incorrect.

16. The impugned goods are classifiable under tariff item no. 84151010 of First Schedule to Customs Tariff Act, 1975. The impugned order is set aside and appeal allowed.

(Order pronounced in the open court on 11/09/2020)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)