

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 89252 OF 2014

[Arising out of Order-in-Appeal No: 2305 to 2337(Gr.V)/2014 (JNCH)/IMP-2209 to 2241 dated 4th June 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Daikin Airconditioning India Pvt Ltd

12th Floor, Building No.9, Tower A, DLF Cyber City
DLF Phase – III, Gurgaon – 122002, Haryana

... Appellant

versus

Commissioner of Customs (Import)

Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, Dist: Raigad - 400707

...Respondent

WITH

C/89254/2014	C/89257/2014	C/89259/2014	C/89261/2014
C/89263/2014	C/89264/2014	C/89265/2014	C/89266/2014
C/89267/2014	C/89271/2014	C/89274/2014	C/89275/2014
C/89278/2014	C/89279/2014	C/89280/2014	C/89281/2014
C/89282/2014	C/89283/2014	C/89284/2014	C/89285/2014
C/89286/2014	C/89287/2014	C/89288/2014	C/89289/2014
C/89290/2014	C/89291/2014	C/89292/2014	C/89293/2014
C/89294/2014	C/89295/2014	C/89296/2014	AND
C/89297/2014			

APPEARANCE:

Shri T Vishwanathan, and Mr Akhilesh Kangasia, Advocates for the appellant

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

CORAM:

**HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: 87486-87518/2024

DATE OF HEARING:	24/06/2024
DATE OF DECISION:	13/12/2024

PER: C J MATHEW

The issue involved in these 33 appeals of M/s Daikin Airconditioning India Pvt Ltd, arising from as many assessments in bill of entry filed between 21st October 2003 and 29th February 2014 in which the claim for rate of duty corresponding to tariff item 8415 1010 of First Schedule to Customs Tariff Act, 1975 with attendant benefit of notification¹ was revised to duty liability appropriate to tariff item 84.15 8210 of First Schedule to Customs Tariff Act, 1975, is the appropriateness of 'split air conditioners incorporating refrigerating unit with dual function (cooling and heating)' for which the said exemption was not available as the correct classification.

2. According to Learned Counsel for appellant, the issue has since been decided by the Tribunal in *Daikin Air-Conditioning India P Ltd v. Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva* [2020 (374) ELT 768 (Tri.-Mumbai)].

3. Learned Authorised Representative submitted that the said order of the Tribunal has been appealed against by Revenue and that the matter is still pending before the Hon'ble Supreme Court along with application for stay. In this connection, he drew our attention to the decision of the Hon'ble Supreme Court in *Commissioner of Customs, Mundra v. Cargil India Pvt Ltd* [2019 (23) GSTL 440 (SC)]

¹ [no. 85/2004-Cus dated 31st August 2004]

holding that

‘2. The issue of classification is raised in this appeal. The Customs, Excise and Service Tax Appellate Tribunal (“CESTAT”) in the impugned order [2017 (353) E.L.T. A99 (Tribunal)] had noted that the said issue of classification is pending in this Court in other appeals. On that basis the CESTAT has disposed of the appeal. Liberty is also given to approach the CESTAT after the verdict of this Court in the appeals pending here. In that view of the matter the CESTAT should not have disposed of the appeal and should have kept the appeal pending till the issue is decided by this Court.

3. In view thereof the order of the CESTAT disposing of the appeal is set aside and it is clarified that the appeal would remain pending before the CESTAT till the issue is decided by this Court whereafter the parties can approach the CESTAT.’

4. We note that while the appeal of Revenue is yet to be disposed off by the Hon'ble Supreme Court, the dispute before us is a consequence of investigations in July 2013 that led to the re-determination of classification of their own imports between 2009-10 and 2013-14 as culmination of proceedings in show cause notice dated 29th May 2014. It also appears that, since the commencement of investigations, the assessing authorities had been adopting the classification as proposed by the investigating agency and the present appeals pertain to the consignments imported thereafter and before the issue of show cause notice which was disposed off by the Tribunal in *re Daikin Air-Conditioning India P Ltd.*

5. It would, therefore, appear that, in these circumstances, disposal of these appeals would not be prejudicial to Revenue by any stretch. The decision of the Hon'ble Supreme Court in *re Cargil India Pvt Ltd* was in response to the Tribunal having disposed off the appeal before it without 'confirming, modifying or annulling or referring the case back to the authority which passed it', as set out in section 129B(1) of Customs Act, 1962, as well as, by granting liberty to make fresh appeals consequent to final disposal by the Hon'ble Supreme Court that would be contrary to the deadlines prescribed in section 129A of Customs Act, 1962. We do not propose to dispose off the present appeals in the manner that did not find favour with the Hon'ble Supreme Court.

6. Learned Counsel for the appellant submitted that they had preferred their challenges before the first appellate authority against assessment in bill of entry without the benefit of 'speaking order' prescribed in section 17(5) of Customs Act, 1962. They had also placed before the first appellate authority the circumstances in which they had been compelled to discharge the duty liability without the benefit of notification and that the impugned order had not taken note of the constraints.

7. The impugned order² of Commissioner of Customs (Appeals),

² [order-in-appeal no. 2305 to 2337(Gr.V)/2014 (JNCH)/IMP-2209 to 2241 dated 4th June 2014]

Mumbai – II has delved into the rival tariff items to affirm assessment in the bill of entry without having any material on record as to the manner in which the assessing authority had concluded on the appropriateness of the revision. In doing so, the assessing authority had ventured upon an exercise that was required to conform to the prescriptions in Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975, as well as the rules of engagement in resolving disputes on classification, as set out by Hon'ble Supreme Court in *Hindustan Ferodo Ltd v. Collector of Central Excise* [1997 (89) ELT 16 (SC)], thus

'It is not in dispute before us as it cannot be, that onus of establishing that the said rings fell within Item No. 22-F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.'

and, in *HPL Chemicals Ltd v. Commissioner of Central; Excise, Chandigarh* [2006 (197) ELT 324 (SC)], that

'28. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub- heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all

by the Revenue.....’

We are concerned that the first appellate authority, in the absence of any finding by the original authority, had proceeded to the classification without the wherewithal to ascertain the revision as being legal and proper. The scheme of assessment in section 17 of Customs Act, 1962, since amendment by the Taxation Laws Amendment Act, 2006 with effect from 13th July 2005 as well as the overhauling of section 17 of Customs Act, 1962 by Finance Act, 2011 to cover ‘self assessed discharge of duty liability’, requires

‘Section 17. Assessment of duty. –

xxxxx

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.’

which the first appellate authority has failed to take note of in concurring with the classification altered by the assessing officer at the instance of investigating agency and observed on lack of evidence as letters of ‘protest’ or any other suggestion of dissonance, that the original authority was not required to issue speaking order. From a plain reading of section 17 of Customs Act, 1962, it is apparent that,

to the extent that self-assessment has been overruled, and except in circumstances in written consent for such re-assessment it was obligatory for the proper officer to issue a speaking order. Failure to do so is a breach of that obligation imposed by the statute.

8. That an assessing officer may choose to be guided by the proposals of investigating agency is not surprising but that an assessing officer should insist upon the importer opting for classification as proposed by investigating agency is inappropriate. It runs contrary that the prescription of self-assessment and orders of re-assessment in section 17 of Customs Act, 1962. It goes without saying that, between the time of filing of bill of entry under section 36 of Customs Act, 1962 and its final disposal in terms of section 48 of Customs Act, 1962, goods exist entirely in the control of customs authorities and overreach in persuading to conform is not to be ruled out. The very fact that the assessment was challenged immediately thereafter is an indication of lack of concurrence and enforced conformity. In these circumstances, it was incumbent upon the first appellate authority to ensure compliance with law on the part of 'proper officer' which, not having been done, taints the orders now impugned before us with the same stain of lack of legality.

9. In view of the circumstances above, affirmation of the impugned order would be tantamount to participation in breach of

law. That suffices to merit setting aside the impugned order and to restore the bills of entry before the original authority for compliance with the procedure set out in section 17 of Customs Act, 1962 and, in particular, section 17(5) therein.

10. The appeals are, thus, allowed by way of remand.

(Order pronounced in the open court on 13/12/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*