(2002) 03 SC CK 0007

In the Supreme Court Of India

Case No : Civil Appeal 1423 of 1999

Kerala State Electricity Board APPELLANT

Vs

Collector of Customs, Kerala RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:

Citation : (2002) 82 ECC 228 : (2002) 142 ELT 278 : (2002) 10 SCC 535

Hon'ble Judges : S. P. Bharucha, C.J;N. Santosh Hedge, J;Arijit Pasayat, J

Bench : Full Bench

Advocate : Joseph Vellapally, Malini Podwal and Lansinlu Rongmei, for the Appellant; H.N. Salve, SG, G. Venkatesh Rao and B. Krishna Prasad, for the Respondent

Final Decision : Allowed

Judgement

1. The appellants imported circuit breakers and connected items for the setting up of new sub-stations to improve their transmission and distribution network in the major cities to which they catered. The Central Electricity Authority, Government of India, gave them a certificate on 28th May, 1990 that the goods to be imported were eligible for the concessional rate of customs duty under Tariff Heading 98.01. This classification having been denied to them by the lower authorities, the matter went higher and ultimately reached the Customs, Excise and Gold (Control) Appellate Tribunal. It is the order of that Tribunal which is under challenge before us.

2. The Tribunal took the view that the imported goods were to be used for improvement in the transmission and distribution of electricity in the major cities; there was going to be no increase in the generation of power in the capacity already existing and set up by the appellants. Therefore, the imported goods were not meant for the substantial expansion of an existing power project and were not covered by Tariff Heading 98.01.

3. Tariff Heading 98.01 applies to all items of machinery required for the initial

setting up of an unit or the substantial expansion of an existing unit of, inter alia, a specified power project. The Tribunal appears to have taken the view that 'power project' meant only a project which generated electric power and not a project that transmitted or distributed electricity.

4. The learned Solicitor General, appearing for the Revenue, fairly concedes that 'power project' within the meaning of Tariff Heading 98.01 must include not only a project that generates electricity but also a project that transmits and distributes electricity, and we think that he is right in so doing.

5. The learned Solicitor General urges that there is need now to ascertain whether there was going to be, by reason of the imported goods, a substantial expansion (more than twenty five per cent) in the capacity of the appellant's network, which aspect had not been considered by the Tribunal. We are inclined to agree that the order of the Tribunal must be set aside and the matter remanded to the Tribunal to consider the aforesaid aspect.

6. The civil appeal is allowed. The order under challenge is set aside. The matter (Appeal No. E/2046/91-B2 of 1991) shall stand restored to the file of the Tribunal at New Delhi to consider and decide whether the imported goods will result in a substantial expansion (more than twenty five per cent) in the capacity of the appellant's network. In this behalf, both parties will be at liberty to place further evidence before the Tribunal.

7. No order as to costs.