
(2003) 08 SC CK 0035

In the Supreme Court Of India

Case No : Civil Appeal No. 359 of 1997

Khaitan Electrical Ltd.

APPELLANT

Vs

Collector of Central Excise, New Delhi

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)

Citation : AIR 2003 SC 3932 : (2003) 6 ALT 37 : (2003) 89 ECC 4 : (2003) 156 ELT 449 : (2003) 2 JT 167 Supp : (2003) 6 SCALE 119 : (2003) 2 SCR 268 Supp

Hon'ble Judges : S. Rajendra Babu, J;G. P. Mathur, J;B. N. Srikrishna, J

Bench : Full Bench

Advocate : Joseph Vellapally, Rohina Nath and Umesh Kumar Khaitan, for Khaitan and Co, for the Appellant; T.L.V. Iyer Rajiv Nanda and B.K. Prasad, for the Respondent

Final Decision : Allowed

Judgement

Srikrishna, J.—The appellant is engaged in manufacture of electric fans of different varieties. In respect of its four models of fans called 'Mini', 'Tini', 'Chiki' and 'Miki' the appellant submitted a classification list for approval under T.I.No. 33(1) and also claimed concessional rate of duty @ 5% ad valorem under the Notification No. 46 of 1984 dated 1.3.1984, The Assistant Collector, Central Excise issued a notice dated 23.3.1984 calling upon the appellant to show cause as to why the aforesaid models of fans should not be classified under Item No. 33(3) and under item No. 1(1)(b) of the Notification No. 46/84. By an order dated 19.1.85 the Assistant Collector, Central Excise, Faridabad classified the said products under T.I.No. 33(1)(b) for the purpose of availing benefit of Notification No. 46/84. On appeal the Collector of Customs and Central Excise (Appeals) took the view that considering the design and manufacture as also the literature containing the description of the concerned models of the fans, they were used primarily as table fans. The Collector (Appeals) was of the view that although there was an arrangement for clamps which enabled the concerned models of fans to be hung from wall or ceiling, their design and manufacture was

entirely different from regular cabin fans which could never be placed upon a table. In this view of the matter, the Collector (Appeals) held that all the four models of fans should be classified as table fans, attracting ad valorem duty of 5% under T.I.No. 33(1)(a). Upon further appeal to the Customs, Excise, Gold(Control) Appellate Tribunal (hereinafter referred to as 'CEGAT'), there was a difference of opinion between the two Members of CEGAT. While the Judicial Member took the view that the concerned models of fans were to be classified under T.I.No. 33(1) as table fans, both for the purpose of classification as well as the exemption notification, the Vice President disagreed and was inclined to uphold the view of the Assistant Collector. In view of the difference of opinion, the matter was referred to the third Member who agreed with the Vice President, that for the purpose of duty as well as exemption under the notification, the fans would fall under sub-item 3(b) of serial No. 2. In accordance with the majority judgment of the CEGAT the order passed by the Collector (Appeals) was set aside and the order of the Assistant Collector was upheld. Hence, this appeal by special leave.

2. The Tariff details of the Item No. 33 are detailed below:

"Item No.33 - ELECTRIC FANS

Item No. Tariff Description Rate of Duty

33 Electric fans including regulators for electric fans, all sorts -

1 Table, cabin, carriage, pedestal, circulator fans, of a diameter not exceeding 40.6 centimetres and regulators therefore. Fifteen percent ad valorem

2 Electric fans, designed for use in an industrial system as parts indispensable for its operation and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose, and regulators therefore. Fifteen percent ad valorem

3 Electric fans, not otherwise specified, and regulators therefore. Twenty percent ad valorem

3. The relevant Notification No. 46 of 1984 dated 1.3.1984, reads as follows:

"EXEMPTION NOTIFICATIONS

ELECTRIC FANS

46/84 --CE, Dt.1.3.1984

Effective rates of excise duty on specified sizes of ceiling fans and table fans have been prescribed.

GSR- In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods of the description specified in column (3) of the Table annexed hereto and falling under the sub-items specified in the corresponding entry in column (2) of the said Table

of Item No. 33 of the First schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from so much of the duty of excise leviable thereon under the said Act at the rate specified in the said First Schedule, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table.

33-ELECTRIC FANS TABLE

S.No.

(1) Sub-Item No. (2) Description

(3) Rate

(4)

1 (1) Electric fans of a diameter (blade sweep) not exceeding 40.6 centimeters and regulators therefore

(a) Table fans Five per cent ad valorem

(b) Cabin, carriage, pedestal and air circulator fans and regulators therefor Ten percent ad valorem

2 (3) Electric fans not otherwise specified

(a) Ceiling fans of a diameter (blade sweep) not exceeding 107 centimetres Seven and a half percent ad valorem

(b) Others Fifteen per cent ad valorem

3 (3) Regulators for electric fans Fifteen per cent ad valorem

4. In our view, the Order of the Collector of Customs and Central Excise (Appeals) was well reasoned order and justified

5. The stand of the Department is that the fans in dispute are 'multi purpose' and could be used as table and also as cabin/carriage fan; that considering their usage for different purposes the fans in common parlance cannot be termed as table fan only. The Collector (Appeals) based his decision on the fact that the fans in question were designed primarily as table fans, although they were capable for being hung from wall or ceiling. He rightly pointed out that, because of the peculiarity of design and manufacture, the concerned fans were entirely different from regular cabin fans which could not be adapted as table fans, also basing his decision on the description of the fans in the literature distributed by the appellants. The literature describes it predominantly as a table fan, though capable of being fixed on the wall or ceiling. In our view, this conclusion was a perfectly justifiable and reasonable view of the matter and there was no justification for the CEGAT to interfere with the order of the Collector (Appeals). We agree with the decision of the Collector (Appeals).

6. In the result, we allow the appeal, set aside the order of the CEGAT dated

12.8.1996 and restore the decision of the Collector (Appeals) New Delhi dated 22.7.1986 with regard to the classification of the concerned models of fans both under the Tariff item as well as the exemption notification.

7. The appeal is accordingly allowed without any orders as to costs.