

?ITEM NO. 101 (Part heard)
SECTION III

COURT NO.5

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL No. 1118 of 2001

M/s. Nicco Corporation Ltd.

Appellant (s)

Versus

Commissioner of Central Excise,
Calcutta

Respondent (s)

(with appl(s) for permission to file rejoinder affidavit and office report)

Date: 22/03/2006 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE LOKSHWAR SINGH PANTA

For Appellant(s) Mr. S.K. Bagaria, Sr. Adv.
Mr. Praveen Kumar, Adv.

For Respondent(s) Mr. B. Dutta, ASG
Mr. Mohit Chaudhary, Adv.
Mr. P. Parmeswaran, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Appeal is dismissed. No order as to costs.

(J.S. Rawat)
AR-cum-PS

(Kanwal Singh)
Court Master

[Signed order is placed on the file].

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 1118 of 2001

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O R D E R

This is a statutory appeal filed under Section 35L(b) of the Central Excise Act, 1944 (for short "the Act") impugning final Order No.A-1543-CAL/2000 dated 13th September, 2000 in Appeal No. E/R-210/98 passed by the Customs Excise & Gold (Control) Appellate Tribunal, Eastern Bench, Calcutta (for short "the Tribunal") whereby the appeal filed by the assessee-appellant (herein after called "the assessee") has been rejected. The Tribunal by the impugned order has held that "wires and cables" in question cannot be considered as parts of Wind Mills and benefit of Notification No. 205/88-CE dated 25th May, 1988 as amended by notification no. 57 of 1995 dated 16th March, 1995, cannot be extended to the assessee.

The assessee is a manufacturer of "insulated wires and cables" falling under Central Excise Tariff Sub-Heading No.8544.00. Apart from manufacturing the traditional domestic wires and cables, the assessee also manufactures specially designed wires and cables for industrial use by specific customers.

The notification in question grants exemption to certain specified goods connected with solar and other natural energy. Wind mills, parts of wind mills and any specially designed devices which run on wind mills, are

specified at serial no. 12 of the Notification (as amended).

The moot point in the appeal is, whether the assessee is entitled to the benefit of notification no. 205/88-CE dated 25th May, 1988 in respect of the wires and cables removed and sold by the assessee during the period from August to September, 1995 to M/s. Vestas R.R.B. India Limited, Madras on the contention that the power cables are part of the wind mill and, thus, entitled to the benefit of the notification in question. Revenue's contention is that the power cables are only for general purpose and cannot have the benefit of exemption under the Notification in question as the power cables cannot be treated to be parts of the wind mill.

The Adjudicating Authority as well as the Commissioner (Appeals) held that the cables in question perform the normal functions for transmitting the power from Generator to the control panel from where the power is carried to the grid for onward supply to the customers and, therefore, do not qualify as part of wind mills.

The Tribunal in appeal has upheld the decision of the Adjudicating Authority as well as the Commissioner (Appeals). Distinguishing the decision relied upon by the assessee in the case of Elecon Engineering Co. Ltd. v. Commissioner of Customs, Mumbai-II [1998(103) ELT 395(T)] and relying upon the later decision of the Tribunal in United Cables Industries v. C.C.E., Meerut [2000(40) RLT 38 (CEGAT)], the Tribunal while observing:

"The case law relied upon by the Ld. Consultant

namely the Tribunal decision in the case of Elecon Engg. Co. Ltd. vs. CC, Mumbai-II, reported in 1998 (103) ELT 395(T) is distinguishable from the facts of the present case. In that case power cables were cut to specific sizes and were fitting with end fittings which were connected to the induction generator in the Nacelle and they were performing dual function of transforming power for 'excitation.' Further, the importer produced a certificate from the Research and Development Centre of M/s. Turbowinds, Brussels, to the effect that one Wind Turbine Controller which is also termed as an electrical regulation cabinet, comprises, inter alia, inside cabling which includes the cable between lower base and the Nacelle which is split into power cables and control cables. In the present the appellants have not been able to establish that the cables manufactured by them are identifiable parts of the wind mill and therefore, the benefit of exemption notification is not available to them.",

held that in the present case similar situation existed and, therefore, under the circumstances, the wires and cables in question cannot be considered as parts of wind mills and the benefit of notification cannot be extended to the assessee.

The aforesaid decision of the Tribunal in the case of United Cables Industries v. C.C.E., Meerut [supra], was challenged in an appeal (being Civil Appeal No. 7955 of 2001) before this Court which was dismissed on 19th of November, 2001. Though the said order dismissing the appeal indicates that the delay in filing the appeal has not been condoned, yet, it seems, the appeal has not been dismissed on the ground of delay alone, but on merits as well. Resultantly, the decision of the Tribunal to the effect that the insulated cables are not parts of wind mill which is complete in itself without electric cables, although wind mill may not be able to function without these cables, and, as such benefit of exemption under Notification No.205/88-CE would not be available to the assessee, was upheld by this Court.

In view of the fact that the decision relying upon which the

Tribunal has dismissed the appeal, has been upheld by this Court, we do not find any merit in this appeal and dismiss the same with no order as to costs.

.....J.

(ASHOK BHAN)

New Delhi;
March 22, 2006.

.....J.
(LOKESHWAR SINGH PANTA)