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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 445 OF 2007

M/S. OTIS ELEVATOR CO. (INDIA)LTD. ... Appellant

VERSUS

COMMISSIONER OF CENTRAL EXCISE ... Respondent

WITH

CIVIL APPEAL NO. 10633 OF 2014

O R D E R

These appeals raise an interesting and important question: as to whether persons like the assessees, in these cases, who manufacture 'lifting machinery', which machinery, it is argued, is the essential part which actually brings up and brings down an elevator/lift, is liable to be classified under Chapter sub-heading No. 8428.00 or 8431.00.

"8428.00 Other lifting, handling, loading or unloading machinery (for example, lifts, escalators, conveyors, teleferics)

8431.00 Parts suitable for us solely or principally with the machinery of heading Nos. 84.25 to 84.30."

Both the assessees before us contend that despite the fact that they produce components of lifting machinery separately, these are all cleared at the factory gate under a single contract number and ultimately form the essential part of what is finally shown, by way of a lumpsum price as a complete elevator or lift.

Learned counsel for the Revenue on the other hand, contends that these are only parts that are sold at the

factory gate which are suitable for use with the machinery under Chapter Heading No. 84.28 and therefore are liable to be classified under sub-heading No. 8431.00. The period with which we are concerned in these appeals is, in Civil Appeal No. 445 of 2007, from 01.03.1987 to 20.02.1995, and in Civil Appeal No. 10633 of 2014, from April, 1986 to 01.03.1995. The reason why these appeals are not concerned with the period after 01.03.1995 is that whether these components are classified under sub-heading No. 8428.00 or 8434.00 after 01.03.1995, the duty is the same. However, for the period in question, if classification takes place under sub-heading No. 8428.00, the duty at one point of time is 15 per cent as opposed to the duty under sub-heading No. 8431.00, which at one point of time, was 20 per cent. We are informed that for all these years, the duty rates fluctuate but never so as to bring sub-heading No. 8431.00 at par with sub-heading No. 8428.00.

Learned counsel for the assessees had argued before both the Commissioner and the Tribunal in the two respective appeals that essentially what was ultimately sold was a complete lift and as a complete lift was immovable property, since all the components were fixed in the premises of the customer, it would not be classified as such in an excise tariff, which deals only with goods. However, the very fact

that the expression "lifts" occurs in sub-heading No. 8428.00 would necessarily mean that it is not immovable property that is sought to be taxed under the Central Excise Tariff but the price of components which make-up the ultimate lift and that being so, it should fall within sub-heading No. 8428.00 and not 8431.00.

What has been held by both the Commissioner and the Tribunal in the two judgments which are under appeal before us is essentially that since the appellants-assessees do

not, in fact, manufacture every single component that goes into a lift, neither Note No. 4 of Section 16 nor interpretative Note 2(a) would apply, since what has been cleared is only certain parts of the complete lift. It was concurrently found by the authorities that the Revenue's case was made out, and that the component parts manufactured by the assessees would fall within sub-heading No. 8431.00.

Learned counsel for the assessees, however, raised for the first time before us a new argument. According to them, what they, in fact, manufactured was lifting machinery as being something apart from and different from a complete lift or elevator. This being the case, according to them, Note 4 of Chapter 16 would cover their case as individual components manufactured under one contract are intended to contribute together to a clearly defined function covered by sub-heading No. 8428.00, viz., lifting machinery. This being the case, according to them, Note 4 of Chapter 16, if

correctly applied, would necessarily lead to the conclusion that the components manufactured by them would fall only under sub-heading No. 8428.00 and not sub-heading No. 8431.00. They also made another submission for the first time before us. They said, in any event, sub-heading No. 8431.00, which refers to parts suitable for use solely or principally with the machinery of sub-heading No. 8428.00, would only refer to parts that were used after a complete lift was already set up and not before. They contrasted the language of sub-heading No. 8431.00 with the language of sub-heading No. 8476.91, which simply states 'parts of machines of sub-Heading No. 8476.11'. The contrast in the language, according to them, makes it clear that the parts spoken of in the latter entry could well be parts of a machine itself, as opposed to sub-heading No. 8431.00, where the parts have to be suitable for use only with the

machinery that is already installed.

Learned counsel for the Revenue submitted that on what was argued, the decision of the authorities below as well as the Tribunal in both the appeals were absolutely correct and did not need any further review by this Court. He also stated that if this Court were to permit the assessee to turn around at this juncture and argue something new which had not been argued before the Commissioner or the Tribunal, he would be put to a disadvantage and would not be able to give any effective reply.

Since we are of the opinion that this is an important question that needs to be determined having reasonably wide ramifications, we would allow the assessees to raise these points on a remand made to the Tribunal in both these cases. This we do also having regard to the fact that the new pleas raised before us are questions of law which need to be answered on the same set of facts, and no new or additional facts need to be pleaded in order that the assessees make out their case. This being the case, we, therefore, set aside both the Tribunals judgments in the two appeals before us and remand these cases for a fresh hearing before the Tribunal allowing both sides to take up all points which arise on the facts of these appeals. Both the appeals are disposed of accordingly.

Since these are old matters, the Tribunal is requested to take up and dispose of these matters within six months from the date on which this order is communicated.

....., J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
September 17, 2015.

ITEM NO.102 COURT NO.14 SECTION III

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. 445/2007

M/S. OTIS ELEVATOR CO. (INDIA)LTD. Appellant(s)

VERSUS

COMMISSIONER OF CENTRAL EXCISE Respondent(s)

(With appln. (s) for permission to file additional documents and stay and office report)

WITH

C.A. No. 10633/2014 (With Office Report)

Date : 17/09/2015 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. S. K. Bagaria, Sr. Adv.
Mr. Rohan P. Shah, Adv.
Mr. Alok Yadav, Adv.
Mr. Somnath Shukla, Adv.
Mr. Udit Jain, Adv.
Mr. K. Ajit Singh, Adv.
Mr. Praveen Kumar, Adv.

Mr. S. Ganesh, Sr. Adv.
Mr. Shreekant Mehta, Adv.
Mr. Bhargava V. Desai, Adv.
Ms. Saumya Mehrotra, Adv.

For Respondent(s) Mr. A. K. Panda, Sr. Adv.
Ms. B. Sunita Rao, Adv.
Ms. Sunita Rani Singh, Adv.
Mr. Anurag, Adv.
Mr. Arijit Prasad, Adv.
Mr. B. Krishna Prasad, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeals are disposed of in terms of the signed order.

(Nidhi Ahuja) (Renu Diwan)
COURT MASTER COURT MASTER

[Signed order is placed on the file.]