IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 5146 OF 2003

M/S. VINTRON ELECTRONICS PVT. LTD. Appellant (s)

VERSUS

COMMNR. OF CENTRAL EXCISE, DELHI Respondent(s)

WITH

CIVIL APPEAL NO. 3560 OF 2007

COMMNR. OF CENTRAL EXCISE, DELHI Appellant (s)

VERSUS

M/S. D-LINK (INDIA) LTD. Respondent(s)

O R D E R

Civil Appeal No. 5146 of 2003

1. This appeal is directed against the judgment and order passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi ('the Tribunal' for short) in Appeal No. E/1661/2000-B dated 8.11.2002.

2. The classification of add-on cards and motherboards for the purpose of the Central Excise Act, 1944 and the relevant rate of duty leviable, is the

core issue in this appeal. The Tribunal, in its impugned order, has come to the conclusion that add-on cards and motherboards are to be classified under Sub-Heading No. 8473.00 of the Central Excise Tariff Act, 1985 ('the Act' for short).

3. The brief history with regard to the rate of duty on add-on cards and motherboards prior to 1989,

after 1989 and for the relevant period requires to be noticed.

4. Prior to 1989, add-on cards were falling under Sub-Heading No. 8473.00 and the rate of duty leviable was 10% whereas, for goods falling under Sub-Heading No. 8471.00, the rate of duty leviable was 5%.

5. It is relevant to note that the assessee had filed an appropriate declaration before the Adjudicating Authority to classify add-on cards as an item falling under Sub-Heading No. 8473.00. The said declaration had been accepted by the Adjudicating Authority.

6. With effect from 01.04.1989, the rate of duty insofar as goods falling under Sub-heading No. 8471.00,

was increased from 5% to 15%. However, the rate of duty for the goods falling under Sub-Heading No. 8473.00 remained the same.

7. The assessee had filed a fresh declaration, inter alia, seeking that his goods require to be classified under Sub-Heading No. 8471.00 instead of Sub-Heading No. 8473.00. That was also accepted by the Adjudicating Authority.

8. With effect from 01.04.1994, the rate of duty on goods falling under Sub-Heading No. 8473.00 was at 20% instead of 10% and that on goods falling under Sub-Heading No. 8471.00 remained 15%.

9. There appears to be some confusion with regard to the rate of duty after 1989 and for the relevant period also. The assessee would contend that it was at

15% but the revenue's stand appears to be that it was at 25%. This may not have any bearing on the issue that requires to be considered and decided by us.

10. The Assistant Commissioner/Adjudicating Authority had issued three show cause notices for different periods, inter alia, directing the assessee to pay the differential duty, since the goods which the

appellant is manufacturing and effecting distribution would fall under Sub-Heading No.8473.00 and not under Sub-Heading No.8471.00. After receipt of the show cause notices, the assessee had filed its detailed reply, inter alia, contending that the goods in question are units of Automatic Data Processing Machine, and therefore, requires to be classified only under Sub-Heading No.8471.00, and that there was no justification for directing the assessee to pay the differential duty of 5% by classifying the said goods under Sub-Heading No. 8473.00.

11. The Adjudicating Authority, after considering the reply of the appellant, has confirmed the demand made in the show cause notices issued earlier. In the appeal filed, the Appellate Authority has confirmed the demand, observing that the demand can be raised only after a fresh declaration was filed, i.e. w.e.f. 27.7.1994, while maintaining that the goods in question would fall under Sub-Heading No. 8473.00 of the Tariff Entry. In appeal filed before the Tribunal, the view of the first Appellate Authority has been confirmed. The assessee, being aggrieved by these orders, is before us in this appeal.

12. We have heard Sh. Manish Mohan, learned counsel

for the appellant-assessee and Sh. Naresh Kaushik, learned counsel for the revenue. Sh. Mohan would submit that add-on cards and motherboards are essential items for an Automatic Data Processing Machine, independent of which, an Automatic Data Processing Machine could not effectively function. Therefore, he would contend, the goods which the appellant is dealing with, requires to considered as units of an Automatic Data Processing Machine, and classified only under Sub-Heading No. 8471.00 and the rate of duty for the relevant period was only 15%. He would further state that there was no justification for the Adjudicating Authority to treat the goods in question as parts or accessory of Automatic Data Processing Machine and fix the rate of duty at 20%, resulting in the demand of differential rate of duty at 5%. In support of this contention, the learned counsel has taken us through some literature on add-on cards and motherboards. He also relies upon the decision of the Tribunal in the case of Indcheom Electronics Ltd. Vs. Commissioner of Central Excise, Chennai reported as 1997 (95) E.L.T. 580.

13. Per contra, Sh. Kaushik would submit that for a correct appreciation of Sub-Heading No. 8473.00, the

machines enumerated under 8469.00 to 8472.00 requires to be taken note of. He would further submit that add-on cards and motherboards would enhance the functioning of Automatic Data Processing Machine. That being the case, he would state, they could be properly classifiable only as accessories and not as units of Automatic Data Processing Machine. The learned counsel also refers to several clippings from the text books on add-on cards and motherboards.

14. We have carefully perused the impugned judgment and order. In the impugned order, the Judicial Member of the Tribunal merely proceeds to decide the issue on the ground that the assessee had classified the goods in question under Sub-Heading No. 8473.00, and therefore, it was not open to him to claim classification under Sub-Heading No.8471.00 so as to enjoy a lesser rate of duty. The other Member of the Tribunal (Technical) proceeds to decide the issue by applying Chapter Note 5(a) and 5(b) of Heading 8473 to reach the same conclusion.

15. This Court, on number of occasions, has observed that Tribunal is the last fact finding authority on facts. In Standard Radiators Pvt. Ltd. v. CCE, (2002)

10 SCC 740, a Bench of three learned Judges held:

> "2. We are satisfied that far greater consideration should have been given by the Tribunal to the case of the assessee that is shown by the order under challenge. The Tribunal is the last fact-finding authority and it is expected that it will discuss the facts in some detail and not cursorily and come to briefly stated conclusions on that basis. We, therefore, think it appropriate that the order of the Tribunal, which is under appeal, should be set aside and the assessee's appeal (No. E/316/88-Bom) should be restored to the file of the Tribunal, Bench at Bombay to be heard and disposed of afresh, having due to regard to what we have stated above."

16. We fully subscribe to the view expressed by this Court in Standard Radiators Pvt. Ltd.'s case.

17. In a commodity classification for the purpose of the Central Excise Act, it is essential that the character and uses of the commodity and its parts are considered in detail and examined thoroughly, before

arriving at a conclusion. In CCE, Delhi v. Carrier Aircon Ltd., (2006) 5 SCC 596, this Court held:

> "14.....There are a number of factors which have to be taken into consideration for determining the classification of a product. For the purpose of classification the relevant factors
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>
> inter alia are statutory fiscal entry, the basic character, function and use of the goods....."

18. The Tribunal is expected to understand the factual scenario with regard to the goods whose classification has fallen for their consideration and decision, before applying the law on the issue. We find that this exercise has not been undertaken by the Tribunal. The nature and character of the products in question (namely, add-on cards and motherboards) and their functions with regard to Automatic Data Processing Machine and other machines has not been scrutinized. Therefore, we are left with no other alternative but to remand the matter to the Tribunal to decide the issue after considering the nature and the functions of add-on cards and motherboards in the functioning of Automatic Data Processing Machines.

19. Accordingly, we allow the appeal, set aside the order passed by the Tribunal in Appeal No.E/1661/2000-B dated 8.11.2002, and remand the matter to the Tribunal for a fresh consideration in accordance with law. We also request the Tribunal to complete this exercise as early as possible, at any rate, within an outer limit of six months from the date of receipt of the copy of

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this order.

Civil Appeal No. 3560 of 2007

20. This appeal is directed against the judgment and order passed by the Customs, Excise & Service Tax Appellat Tribunal, Mumbai ('CESTAT' for short) in Appeal No. E/3188/99 dated 11.08.2005.

21. The CESTAT, merely following the decision of yet another Tribunal in the case of Indcheom Electronics Ltd.-Versus-Commissioner of Central Excise, Chennai reported in 1997 (95) E.L.T. 580, has come to the conclusion that goods such as motherboards which are used in Automatic Data Processing Machine would fall under Sub-Heading No. 8471.00.

22. Before we comment on the view of CESTAT in the instant case, we intend to notice the facts in Indcheom Electronics (supra). That was an appeal filed by an assessee, wherein the assessee took the stand that machines, like motherboards, would fall under Sub-Heading No. 8471.00 and not under Sub-Heading 8473.00 as held by the Appellate Authority. Curiously, the Tribunal holds that motherboards are a part of an Automatic Data Processing Machine and thereby confirms

the order passed by the Appellate Authority. However, in paragraph 16, it proceeds to hold that motherboards are parts of Automatic Data Processing Machine, and therefore, they would fall under Sub-Heading No. 8471.00. We can only say that it is a self-contradiction in the reasoning of the Tribunal. Merely because the expression 'parts' is used under Sub-Heading No. 8471.00, the Tribunal could not have assumed that the motherboards would fall under Sub-Heading No. 8471.00 though it confirms the order passed by the Appellate Authority who had held that the mother

board would fall under Sub-Heading No. 8473.00. This decision of the Madras Tribunal is taken note of in the impugned judgment and relief is given to the assessee. In our view, the specific question that was canvassed was whether motherboards are units of Automatic Data Processing Machine, and therefore, requires to be classified under Sub-Heading No. 8471.00 and not under Sub-Heading No. 8473.00. The revenue's contention was that it fell within the expression 'parts and accessories' of a machine, and therefore, requires to be classified only under Sub-Heading 8473.00 and not under Sub-Heading No. 8471.00. The Tribunal, without going into the core issue that was projected before it, has merely proceeded to rely upon a decision which, in

our opinion, may not give an appropriate conclusion insofar as the claim and the counter-claim of the parties to the lis.

23. In view of the above, we allow the appeal, set aside the order passed by the Tribunal and remand the matter to the Tribunal for a fresh disposal in accordance with law after noticing the nature and the functions of motherboards in the functioning of Automatic Data Processing Machines. All the contentions of both the parties are left open.

24. Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(ANIL R. DAVE)

NEW DELHI
FEBRUARY 07, 2012

ITEM NO.101 COURT NO.9 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(s). 5146 OF 2003

M/S. VINTRON ELECTRONICS PVT. LTD. Appellant (s)

VERSUS

COMMNR. OF CENTRAL EXCISE, DELHI Respondent(s)
(With appln(s) for ex-Parte stay,permission to place addl. documents on record and office report)

WITH Civil Appeal NO. 3560 of 2007
(With appln(s) for stay and office report)

Date: 07/02/2012 These Appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE ANIL R. DAVE

For Appellant(s) Mr. Manish Mohan, Adv.
Ms. Adity P. Singh, Adv.
Ms. Anita Mohan, adv.
Mr. Parveen Kumar, Adv.
Ms. Kaveri Mohan, Adv.
For Mr. Ugra Shankar Prasad,Adv.

Mr. B. Krishna Prasad

For Respondent(s) Mr. Naresh Kaushik, Adv.
C.A. 5146/2003 Mrs. Rashmi Malhotra, Adv.
Mr. A.K. Sharma, Adv.

C.A.3560/2007 Mr. L. Balaji Narayan, Adv.
Mr. Alok Yadav, Adv.
Mr. Sivaramakrishnan, M.S., Adv.
Mr.M.P.Devanath, Adv.

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

Appeals are allowed in terms of the signed order.

(NAVEEN KUMAR) (SHARDA KAPOOR)
COURT MASTER COURT MASTER
(Signed order is placed on the file)