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M/S. KHAITAN ELECTRICAL LTD.

v.

COLLECTOR OF CENTRAL EXCISE, NEW DELHI

AUGUST 6, 2003

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[S. RAJENDRA BABU, B.N. SRIKRISHNA AND G.P. MATHUR, JJ.]

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Central Excises and Salt Act, 1944—First Schedule, Tariff Item 33(1)(a)—Models of fans—Classification—Excise Duty—Exemption of—Held: Fans are designed primarily as table fans though capable of being fixed on wall or ceiling and are also entirely different from regular cabin fans, thus classifiable as table fans attracting 5% ad valorem duty under Tariff Item 33(1)(a).

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Appellant-manufacturer of electric fans submitted a classification list for approval under Tariff Item No.33(1) of the First Schedule to the Central Excises and Salt Act, 1944 for models of fans. He also claimed 5% excise duty under the exemption notification. Assistant Collector classified the products as cabin, carriage, or circulator fans and, therefore, falling under T.I. No.33(1)(b). Collector (Appeals) considered the design and manufacture and also the literature containing the description of the concerned models of the fans and held that they were used primarily as table fans, although they were capable of being hung from wall or ceiling and also their design and manufacture was entirely different from regular cabin fans which could never be placed upon a table. He then classified the products as table fans which attracted 5% ad valorem duty under T.I. No.33(1)(a). Appellate Tribunal set aside the order of the Collector (Appeals) and upheld the order of the Assistant Collector. Hence, the present appeal.

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Respondent-department contended that the fans in dispute are 'multi purpose' and could be used as table fan and also as cabin/carriage fans and that, considering their usage for different purposes, the fans in common parlance cannot be termed as table fan only.

Allowing the appeal, the Court

HELD: The Collector (Appeals) based his decision on the fact that the fans in question were designed primarily as table fans, although they

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were capable for being hung from wall or ceiling. Further, 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, the literature describes it predominantly as a table fan. Thus, the conclusion that the models of fans should be classified as table fans, attracting ad valorem duty of 5% under T.I. No.33(1)(a) of the First Schedule to the Central Excises and Salt Act,1944 was perfectly justifiable and reasonable. [272-D-E; 270-A; 272-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 359 of 1997.

From the Judgment and Order dated 12.8.96 of the Central Excise Custom and Gold (Control) Appellate Tribunal, New Delhi in A.No.E/2346/96-B in F.O.No.E/311 of 1996-B.

Joseph Vellapally, Ms. Rohina Nath and Umesh Kumar Khaitan for M/s. Khaitan & Co. for the Appellant.

T.L.V. Iyer, Rajiv Nanda and B.K. Prasad for the Respondent.

The Judgment of the Court was delivered by

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

A 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 appeals 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 Assistant Collector was upheld. Hence, this appeals by special leave.

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

"Item No.33 - ELECTRIC FANS

Item No.	Tariff Description	Rate of Duty
E 33	Electric fans including regulators for electric fans, all sorts-	
F 1	Table, cabin, carriage, pedestal circulator fans, of a diameter not 40.6 centimetres and regulators therefor.	Fifteen percent ad valorem
G 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 therefor.	Fifteen percent ad valorem
H 3	Electric fans, not otherwise specified,	Twenty percent

and regulators therefor.

ad valorem

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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

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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, 1994, 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.

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33-ELECTRIC FANS
TABLE

S.NO.	Sub-Item.	Description	Rate
(1)	(2)	(3)	(4)
1	(1)	Electric fans of a diameter (blade sweep) not exceeding 40.6 centimetres and regulators therefor-	
		(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-	

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(a) Ceiling fans of a diameter (blade sweep) not exceeding 107 centimetres	Seven and a half per cent ad valorem
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(b) Others	Fifteen per cent ad valorem
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3 (3)

Regulators for electric fans	Fifteen per cent ad valorem
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In our view, the Order of the Collector of Customs and Central Excise (Appeals) was well reasoned order and justified.

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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

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(Appeals).

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.

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

N.J.

Appeal allowed.