THERMAX PRIVATE LIMITED

v.

COLLECTOR OF CUSTOMS (BOMBAY) NEW CUSTOMS HOUSE

AUGUST 19, 1992

[S. RANGANATHAN, V.RAMASWAMI AND B.P.JEEVEN REDDY, JJ.]

Customs Tariff Act, 1975/Central Excises & Salt Act, 1944:

Section 3(1)/Section 8(1)/Rules 8(1), and Rule 192 in Chapter X—Addional duty on article imported equal to excise duty leviable on a like article—Exemption/concession granted to a like article under Rule 8(1) extends to additional duty—Procedure specified in Chapter X—Extends to additional duty on import—Concession available to importer for supplying them to Indian manufacturers—Explanation to S.3(1)—Applicable only where goods of exactly the same description attracted different rates of duty—Highest rate of duty—Applicability of.

The appellant-assessee imported certain goods and paid the customs duty and additional duty at the appropriate rate under the relevant entry of the customs tariff but claimed exemption from the additional duty of customs leviable under S.3(1) of the Customs Tariff Act, 1975 on the basis of two notifications issued u/s. 8 of the Act, and refund of the additional customs duty paid by it. Since the claim was rejected by the Assistant Collector by his orders dated 25..2.85 and 30.9.85 the assessee preferred appeals to the Collector, who allowed one appeal and dismissed the other. The assessee as well as the Revenue preferred appeals before the Tribunal against the respective order which went against them. The Tribunal allowed the appeal preferred by the Revenue and dismissed the assessee's appeal. Aggrieved by the Tribunal's orders, the assessee has preferred the present appeals, contending that even if the tribunal was right in its conclusion that the procedure of Chapter X of the rules cannot be complied with, the exemption under the notification dated 27.7.87 could not be denied.

On behalf of the Revenue it was contended that even assuming that the goods fulfilled the conditions of the notification, the rate of duty applicable would be 80% being the highest rate by virtue of Explanation to

A S.3(1) of the Customs Tariff Act.

Disposing of the appeals, this court

HELD:1.1 The benefit of Chaptex X of the Central Excise Rules, 1944 will no doubt generally be claimed by a manufacturer in which event B he will have to make the application, get the licence and give the assurances, bond or guarantee required by the rules but it can also be claimed by other persons. The language of the rule applies to any person, not necessarily a manufacturer, wishing to obtain remission of duty sanctioned by a notification under rule 8 on excisable goods in a specified industrial C process. [955-C]

1.2. There is nothing in the scheme of the Rule 192 which makes it inapplicable to an importer of goods. The assessee has imported the goods and is selling them for use in a factory, a use which qualifies for the concession under the notifications issued u/s. 8. The types of use specified D in the concessions notified could be of any kind. Only, for claiming a concession in excise duty the user should be the manufacturer himself or he must have made the purchase from a manufacturer liable to pay excise duty on the item whereas in regard to a claim for additional duty (CVD) concession, the supplier will be an importer. The latter will be entitled to E sell the goods at the concessional rate of duty (or at *nil* rate if there is an exemption) if the purchaser from him who puts the goods to the specified use (whether a manufacturer or not) fulfils the requirements of Rule 192. Since the concession under Rule 192 turns only on the nature and use to which the goods are put by the user or purchaser thereof and on whether he has gone through the procedure outlined in Chapter X, it would bot be F correct to deny it to a supplier of such goods on the ground that he is an importer and not a manufacturer. That aspect is provided for by S.3(1) which specifically mandates that the CAV will be equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. If the person using the goods is entitled to the remission, the G importer will be entitled to say that the CVD should only be the amount of concessional duty and, if he has paid more, will be entitled to ask for a refund. The Tribunal was in error in holding that the assessees could not get a refund because the procedure of Chaptex X of the rules is inapplicable to importers as such. [955G,H; 956A-G]

H 1.3. The board is right in observing that the benefit of exemption or

concession should be granted wherever the intended use of the material can be established by the importer or by other evidence. However, the entitlement will depend on whether the purchaser is the holder of an L-6 licence (or C.T.-2 certificate) or not. The goods were supplied by the assessee to two firms of which one was the holder of an L-6 licence. The grant of concession in respect of the firm having L-6 licenee is, therefore, correct. In respect of the other firm the assessee produced no material to show that the "beneficiary" factory was eligible for the concession under Rule 192, and so the benefit of such concession to the assessee was therefore rightly denied. [957G,H; 958A,B]

2. It is no doubt true that Item 29A of the Schedule to the Central Excises and Salt Act, 1944 is very wide and covers various articles. The notification also deals with various categories of articles falling under that item. But there has been no dispute at any stage that the goods in question fall under item with serial no. 8(3) of the notification. So far as this category of goods is concerned, there is only one rate of duty mentioned in the notification. The fact that certain other parts of refrigerating and air-conditioning appliances and machinery may fall under item with S. No. 4 (3) or elsewhere cannot attract the higher duty in respect of the goods presently under consideration. The Explanation to the notification is applicable only where goods of exactly the same description attract different rates of duty. [958F-H]

Collector of Customs **v.** *Western India Plywood Manufacturing Co. Ltd.,* **[1989] Suppl. 2 SCC 515 and** *Collector of Customs* **v.** *Hansur Plywood Works,* **[1989] Suppl. 2 S.C.C.520, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4693-94 (NM) of 1990.

From the Order dated 11.5.1990 of the Customs, Excise and Gold (Control), Appellate Tribunal, New Delhi in C/2636/86-B2 and C/1281/85-B2. (Order Nos. 283 & 284/90-B2).

V. Sridharan, R. Madhava Rao and V. Balachandran for the Appellant.

A.K. Ganguli, Dilip Tandon and P. Parmeshwaran for the Respondent.

The Judgment of the Court was delivered by

A RANGANATHAN, J. These two appeals by Thermax (Pvt.) Ltd. (hereinafter referred to as 'the assessee') raise a question of interpretation of two similar notifications issued under S.8 of the Central Excises & Salt Act, 1944 ('the Act', for short).

B The assessee imported goods described as "Sanyo Single Effect Chiller" from Japan for the purpose of using the same for refrigeration/air conditioning of the factories of Indian Rayon Corporation at Veraval and Nirlon Synthetics Fibre and Chemicals Ltd.. It paid the customs duty leviable thereon at the appropriate rate under the relevant entry of the customs tariff but claimed exemption from the additional duty of customs C leviable under S.3(1) of the Customs Tariff Act, 1975 (C.T.Act, in short). The relevant portion of the said section reads thus:

> "3. (1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty *for the time being* D *leviable on a like article if produced or manufactured in India* and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.
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> E *Explanation :–* In this section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India, or, if a like article is not so produced F or manufactured, which would be leviable on a class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty."

(Underlining Ours)

G In view of the language of the above provision, it is common ground between the parties that notifications of exemption from central excise duty issued from time to time under S.8.(1) of the Act would be applicable, in the case of imported goods, for determining the leviability of the additional duty under S.3(1) above-mentioned. In other words, if any goods are H entitled to full or partial exemption from payment of central excise under

any such notification, the exemption or concession would also extend to A the additional duty payable under S.3(1) of the C.T. Act, subject, of course, to the fulfilment of any conditions or requirements that may have to be complied with for availing the exemption under any particular notification.

The assessee, in the present case, cleared the imported goods after paying the customs duty as well as the additional duty (hereinafter referred B to as 'CVD') but, on second thoughts, decided that it should have claimed a concession in respect of the CVD on the strength of notifications nos. 63/85 and 93/76 issued under S.8 of the Act. It, therefore, made applications for refund of the CVD but these were rejected by the Assistant Collector of Customs by his orders dated 25.2.85 and 30.9.85. C

The assessee appealed to the Collector of Customs (Appeals) from these orders. The Collector allowed the appeal from the order dated 25.2.85 but his successor-in-office, who dealt with the appeal from the later order of 30.4.85, took a different view and dismissed the assessee's appeal. D The assessee as well as the department preferred appeals from the respective order which went against them. The Tribunal accepted the department's appeal but dismissed the assessee's appeal. Hence these two appeals by the assessee.

It is common ground that customs duty is payable and has been paid E on the imported goods under customs tariff item no. 84.17(1) at 40% of the value of the imported goods plus a surcharge of 25% thereon. The rate of CVD, however has to be determined on the basis of item no. 29A of the central excise tariff. It is common ground that "chillers" fall under sub-item (3) of item 29A and that the basic excise duty payable thereon was at 80% F of the value of the goods under the above item read with notification 42/84-C.E. dated 1.3.84.

However, the S.8. notifications referred to earlier provide a further concession. Notification no. 93/76-C.E. is relevant for the purposes of the G first appeal while notification no. 63/85-C.E. is relevant for the purposes of the second. The notifications are somewhat differently worded. It is, however, common ground that the two notifications are worded alike in all respects material for the purposes of the present appeals. It is therefore sufficient if the terms of notification no. 63/85 dated 17.3.85 are extracted here. It reads : H

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EFFECTIVE RATES
63/85-CE, Dt.17.3.1985

"Effective rates of duty on Refrigerators, Evaporative type of coolers, Air-conditioning appliances, etc. and parts thereof prescribed.

B In exercise of the powers conferred by sub-rule (1) rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods of the description specified in column (3) of the Table hereto annexed and falling under the sub-item specified in the corresponding entry in column (2) of the said Table, of Item No. 29A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from so much of the duty of excise C leviable thereon under the said Act at the rate specified in the corresponding entry in column (4) of the said Table subject to the conditions, if any, laid down in the corresponding entry in column (5) thereof.

TABLE

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Sl. No.	Sub Item No.	Description	Rate	Condition
1.	2.	3.	4.	5.
1.	(1)	Refrigerators and other refrigerating appliances-		
		(i) Water-coolers	Nil	–
		(ii) Domestic refrigerators of capacity not exceeding 165 litres	Twenty five per cent *ad valorem.*	–
		(iii) Others	Fifty per cent *ad valorem*	
2.	(2)	Evaporative type of coolers	Thirty per cent *ad valorem.*	If—
3.	(2)	Air conditioners and other air-conditioning appliances including package type of air-conditioners; split unit air-conditioners, the cooling or room unit and condensing unit therefore required for use in any of the following, namely :-	Twenty-five per cent *ad valorem.*	(i) the said goods are so used; (ii) the said goods are not resold within a period of five years from the

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Sl. No.	Sub Item No.	Description	Rate	Condition
		(i) Computer Rooms. (ii) Research and Development Laboratories. (iii) Animal Houses. (iv) Telephone Exchanges. (v) Broadcasting Studios. (vi) Trawlers. (vii) Dams. (viii) Mines and Tunnels. (ix) Thermal or hydel power stations. (x) Technical Building of Military Engineering Services and Mobile Tropo and Mobile Radar Unit under the Ministry of Defence. (xi) Any hospital run by the Central Government, State Government or a Local Authority. (xii) Any hospital run by a Public Charitable Institution, the income from which is exempt under sub-section (22A) of section 10 of the Income Tax Act, 1961 (43 of 1961). (xiii) Any factory. (xiv) Electricity load despatch centres. (xv) Indian Naval Ships.		date of installation and (iii) the procedure specified in Chapter X of the Central Excise Rules, 1944, is followed.
4.	(3)	Parts of refrigerating and air-conditioning appliances and machinery, all sorts, the following, namely :-	Eighty per cent *ad valorem.*	

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Sl. No.	Sub Item No.	Description	Rate	Condition
		(i) Cooling coils or evaporator. (ii) Compressor. (iii) Condenser. (iv) Thermostat. (v) Cooling unit (excluding the room unit of split unit air-conditioner), and in the case of absorption types of refrigerators in which there is no compressor, heater including burners and baffles in a karosene operated absorption type refrigerator. (vi) Starting relay controls (including expansion valve and solenoid valves) and pressure switches. (vii) Overload protection/thermal relay. (viii) Cabinet.		
5.	(3)	Parts of refrigerating and air-conditioning appliances and machinery, all sorts, other than those specified in S.No. 4 above.	Nil	
6.	(3)	Parts of refrigerating machinery as specified in S.No.4 above and required for use in a cold storage for storage and preservation of the food stuffs specified in paragraph 3 of the Cold Storage Order, 1964 dated the 3rd September, 1964	Twenty five per cent *ad valorem*.	If– (i) the said parts are used in the said cold storage; and (ii) the procedure specified in Chapter X of the Central Excise Rules, 1944 is followed.

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Sl. No.	Sub Item No.	Description	Rate	Condition
7.	(3)	Parts of refrigerating appliances and machinery of the description specified in S.No.4 above and required for use in the manufacture of- (a) refrigerating vans, including wagons for transport of perishables, food and dairy products; (b) ships, including frigates where provision is made for the preservation of perishable goods in transport.	Twenty five per cent *ad valorem.*	If– (i) the said parts are so used; and (ii) the procedure specified in Chapter X of the Central Excise Rules, 1944 is followed.
8.	(3)	Parts of refrigerating and air-conditioning appliances and machinery of the description specified in S.No.4 above and required for use in refrigerating or air-conditioning appliances or machinery conditioning appliances or machinery in any of the following, namely:- (i) Computer Rooms. (ii) Research and Development Laboratories. (iii) Animal Houses. (iv) Telephone Exchanges. (v) Broadcasting Studios. (vi) Trawlers. (vii) Dams. (viii) Mines and Tunnels.	Twenty five per cent *ad valorem.*	If– (i) the said parts are so used; and (ii) the procedure specified in Chapter X of the Central Excise Rules, 1944 is followed.

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Sl. No.	Sub Item No.	Description	Rate	Condition
		(ix) Thermal or hydel power stations. (x) Technical Building of Military Engineering Services and Mobile Tropo and Mobile Radar Unit under the Ministry of Defence. (xi) Any hospital run by the Central Government, State Government or a Local Authority. (xii) Any hospital run by a Public Charitable Institution, the income from which is exempt under sub-section (22A) of section 10 of the Income Tax Act, 1961 (43 of 1961). (xiii) Any factory. (xiv) Electricity load despatch centres. (xv) Indian Naval Ships.		
9.	(3)	Compressors used in the manufacture of water coolers.	Nil	If such use is elsewhere than in the factory of production of the said compressors then procedure prescribed under Chapter X of the Central Excise Rules, 1944 is followed.

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It will be seen that the goods set out in the notification are mostly exigible to excise duty at the concessional rate of 25% *ad valorem* provided that they fulfill the conditions set out in column (5) of the above table. It is again common ground that the item of goods presently in question is one of those mentioned in S.No.8, sub-item no. (3) of the notification and that it also conforms to the description of the said item as set out in column (3) of the above table. Turning to column (5), it requires the fulfilment of two conditions to enable the assessee to get the concession :

> (i) that the said parts should be *so used* i.e. used in refrigerating or air-conditioning appliances or machinery in any one of the places set out as items (i) to (xv)of column (3) against item 8(3); and
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> (ii) that the procedure specified in Chapter X of the Central Excise Rules, 1944 is followed.

Here parties are agreed that the chillers imported by the assessee are used in a factory – vide item (xiii) – and that, therefore the first of these conditions has been fulfilled.

The assessee's claim for concession has, however, been rejected not on the ground that the second of the above conditions has not been fulfilled but on the broader ground that the procedure of Chapter X is designed to facilitate clearances only for the purposes of central excise and that the said procedure cannot be fulfilled at all in the case of an importer. In other words, the view was that the second condition was such that it was attracted only for purposes of central excise and could not at all be invoked to claim a concession in CVD. It is the correctness or otherwise of this conclusion that has to be determined in these appeals.

This takes us to a consideration of the provisions of Chapter X of the Central Excise Rules, 1944. This Chapter provides for a "remission of (central excise) duty on goods used for special industrial purposes". Rule 192 is the principal rule in this Chapter which reads thus:

> "Rule 192. – *Application for concession* – Where the Central Government has, by notification under rule 8 sanctioned the

A remission of duty on excisable goods other than salt, used in a specified industrial process any person wishing to obtain remission of duty on such goods, shall make application to the Collector in the proper Form stating the estimated annual quantity of the excisable goods required and the purpose for B and the manner in which it is intended to use them and declaring that the goods will be used for such purpose and in such manner. If the Collector is satisfied that the applicant is a person to whom the concession can be granted without danger to the revenue, and if he is satisfied, either by personal C inspection or by that of an officer subordinate to him that the premises are suitable and contain a secure store-room suitable for the storage of the goods, and if the applicant agrees to bear the cost of such establishment as the Collector may consider necessary for supervising operation his premises for the purposes of this Chapter, the Collector may grant the application, D and the applicant shall then enter into a bond in the proper Form with a surety or sufficient security, in such amount and under such conditions as the Collector approves. Where, for this purpose, it is necessary for the applicant to obtain an Excise Licence, he shall submit the requisite application along with E the proof for payment of licence fee and shall then be granted a licence is the proper Form. The concession shall, unless renewed by the Collector, cease on the expiry of the Licence.

F Provided that, in the event of death, insolvency or insufficiency of the surety, or where the amount of the bond is inadequate, the Collector may, in his discretion, demand a fresh bond: and may, if the security furnished for a bond is not adequate, demand additional security".

G Rules 193 to 196-BB make provisions for proper packing and transport of the goods in question to the premises of the applicant, their storage in a distinct and separate place under the control of the applicant, the maintenance of proper accounts in respect thereof, controls over their transfer and movement and finally regarding the disposal of such goods H where they are found to be in surplus or defective or damaged and even

of the refuse resulting from their use in the specified industrial process. It is unnecessary to go into the details of these provisions for our present purposes. Though the latter part of Rule 192 also enables an applicant, where necessary, to obtain a licence in Form L-6 and also prescribes a form of application (Form AL-6) for grant of duty concession on goods purchased for the process of manufacture during the period of currency of the licence, the opening words of the rule are very wide and general. The benefit of Chapter X will no doubt generally be claimed by a manufacturer in which event he will have to make the application, get the licence and give the assurances, bond or guarantee required by the rules but it can also be claimed by other persons. The language of the rule applies to any person, not necessarily a manufacturer, wishing to obtain remission of duty sanctioned by a notification under rule 8 on excisable goods in a specified industrial process. The industrial processes specified in Column (2) are also not very complicated or elaborate in every case. Even a purchase by a person for use of the part in question in a factory could be covered by the scope of Column (2). Such a person has only to make an application setting out the quantity of goods required as well as the manner and purpose of their use and give a declaration that they will be used for the specified purpose. Thereupon the Collector, if satisfied that the concession can be granted without danger to the revenue may grant the application subject to the conditions set out in the section. He may grant a licence in Form L-6 in appropriate cases and, in others, direct the grant of a certificate in Form CT-2. The possession of the licence or the production of the CT-2 certificate enables the applicant to secure the necessary concession.

It will at once be seen that there is nothing in the scheme of the rule which makes it inapplicable to an importer of goods. The assessee here has imported the goods and is selling them for use in a factory, a use which qualifies for the concession under the S.8 notifications. The types of use specified in the concessions notified could be of any kind and, even in the notifications under our consideration, they are many and varied. In respect of items falling under S.Nos. 3 and 8, in particular, the actual users may be

A private individuals or authorities and need not necessarily be manufacturers using the goods in question in an "industrial process" in a narrow sense of that term. For instance, any computer room, hospital or factory purchasing parts of refrigerating and air-conditioning appliances and machinery for use in the computer room, hospital or factory would be B entitled to claim the concession by following the prescribed procedure. Only, for claiming a concession in excise duty the user should be the manufacturer himself or he must have made the purchase from a manufacturer liable to pay excise duty on the item whereas in regard to a claim for C CVD concession, the supplier will be an importer. The latter will be entitled to sell the goods at the concessional rate of duty (or at *nil* rate if there is an exemption) if the purchaser from him who puts the goods to the specified use (whether a manufacturer or not) fulfils the requirements or Rule 192. Since the concession under Rule 192 turns only on the nature D and use to which the goods are put by the user or purchaser thereof and on whether he has gone through the procedure outlined in Chapter X, it would not be correct to deny it to a supplier of such goods on the ground that he is an importer and not a manufacturer. That aspect is provided for by S.3(1) of C.E.T. Act which specifically mandates that the CAV will be E equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. In other words, we have to forget that the goods are imported, imagine that the importer had manufactured the goods in India and determine the amount of excise duty that he would have been called upon to pay in that event. Thus, if the person using the goods F is entitled to the remission, the importer will be entitled to say that the CVD should only be the amount of concessional duty and, if he has paid more, will be entitled to ask for a refund. In our opinion, the Tribunal was in error in holding that the assessees could not get a refund because the G procedure of Chapter X of the rules is inapplicable to importers as such.

Learned counsel for the assessee however contended that, even if the conclusion of the Tribunal that the procedure of Chapter X of the rules cannot be complied with in such cases is correct, the exemption under the

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notification cannot be denied. He relied, in support of this submission on a letter of the Central Board of Excise & Customs (F.No.332/65/86 TRV dated 27.7.87) the relevant portion of which runs as under :

> "The Board is of the view that it would legally not be correct to levy additional (counter-valing) duty is actually payable in respect of such goods when manufactured in India (sic). It follows therefore, that when there is no excise duty, there can be no additional (counter-valing) duty. The condition in the relevant Central Excise Notifications that in respect of use of the material elsewhere than in the factory of manufacture, the procedure set out in Chapter X of the Central Excise Rules should be followed is condition relating to procedural requirement which obviously cannot be satisfied by the imported goods.
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> In view of the above, it would not be correct to deny the benefit of exemption notification to imported goods only because the procedural condition in the notification is not satisfied by the imported goods. It has therefore, been decided that wherever the intended use of the material can be established by the importer who may be the manufacturer of chemicals or from other evidence, the benefit of exemption under the exemption notification should not be denied to imported goods only because the procedural condition of following Chapter X procedure is not complied with."

It will be seen that this letter also proceeds on the same view as that of the Tribunal that Chapter X procedure cannot be satisfied in the case of imported goods. This is at variance with the interpretation which we have placed on rule 192. We, however, agree with the observation of the Board that the benefit of exemption or concession should be granted wherever the intended use of the material can be established by the importer or by other evidence.

This conclusion however does not entitle the assessee to the concession claimed in both these appeals. Its entitlement will depend on whether the purchaser is the holder of an L-6 licence (or C.T.-2 certificate) or not.

A The Tribunal has pointed out that the goods were supplied by the assessee to Indian Rayon Corporation and M/s Nirlon Synthetics Fibre and Chemicals Ltd., of which the latter was the holder of an L-6 licence. The position in regard to the former is not known. The grant of concession in respect of the former by the Collector (Appeals) in the first appeal is, therefore, B correct and is upheld. So far as the other appeal is concerned, the assessee produced no material to show that the "beneficiary" factory was eligible for the concession under rule 192. The benefit of such concession to the assessee must therefore be held to have been rightly denied in that appeal.

C Shri A.K. Ganguly, on behalf of the Revenue, raises a contention that, even assuming that the goods fulfil the conditions of the notification referred to earlier, the CVD rate applicable would be 80% by virtue of the Explanation to S.3(1) of the C.E.T. Act. He submits that the goods imported by the assessee are "parts of refrigerating and air-conditioning D equipment". They are chargeble at different rates of duty accordingly as they fall under item with serial no.4 (80%) or that with serial no. 5 (Nil) or that with serial no. 6 (20%) or that with serial no 7 & 8 (25%). In such a situation, he says, the provisions of the Explanation to S.3(1) are attracted E and hence the assessee will be liable to duty at the highest rate of 80% we are loth to permit the Department to raise at this stage a fresh contention not taken before the Tribunal or earlier. That apart, we do not think it is well-founded. It is no doubt true that Item 29A of the Schedule to the C.E. Act is very wide and covers various articles. The notification also deals with F various categories of articles falling under that item. But there has been no dispute at any stage that the goods we are concerned with fall under item with serial 8(3) of the notification. So far as this category of goods is concerned, there is only one rate of duty mentioned in the notification. The fact that certain other parts of refrigerating and air-conditioning appliances G and machinery may fall under item with S.No.4(3) or elsewhere cannot attract the higher duty the goods presently under consideration. The Explanation to the notification is applicable only where goods of exactly the same description attract different rates of duty. See, in this connection, the

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decisions on analogous provision in *Collector of Customs* v. *Western India Plywood Manufacturing Co. Ltd.* and *Collector of Customs* v. *Hansur Plywood Works,* [1989] Suppl. 2 S.C.C. 515 and 520. We, therefore, reject this contention. A

For the reasons stated above, we allow C.A. 4693/90 treating it as the appeal arising out of the order passed by the Tribunal from the order of the Collector of Customs dated 16.4.85. C.A. 4694/90 will however stand dismissed but, in the circumstances, without costs. B

G.N.

C.A. 4693/90 allowed,
C.A. 4694/90 dismissed.