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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6284 OF 2013

ABB India Limited
(formerly known as ABB India
Limited)

... Petitioner

vs.

1. The Union of India
Through the Secretary, Ministry
of Finance, Department of Revenue,
North Block, New Delhi – 110 001.

2. The Joint Secretary,
Revisionary Authority, Ministry
of Finance, Department of Revenue,
14, Hudco Vishala Bldg, B Wing,
6th Floor, Bhikaji Cama Place,
New Delhi – 110 066.

3. The Commissioner of Customs
(Exports) Jawaharlal Nehru Custom
House Nhava Sheva, Mumbai-II,
Tal-Uran, Dist.-Raigad
Maharashtra – 400 707.

4. The Assistant Commissioner
of Customs, Drawback Department,
J.N.C.H., Nhava Sheva, Tal-Uran,
Dist.-Raigad,
Maharashtra – 400 707.

... Respondents

Mr. Sriram Sridharan i/b. P.D.S. Legal for the Petitioner.
Mr. Pradeep S. Jetly, Senior Advocate a/w. Mr Sham Walve and Ms.
Sangeeta Yadav for the Respondent.

**CORAM : NITIN JAMDAR AND
GAURI GODSE, JJ.**

DATE : 8 DECEMBER 2022

Oral Judgment: (Per: Nitin Jamdar, J.)

The Petitioner has challenged the order dated 13 June 2012 passed by Respondent No.2 – The Joint Secretary, Revisionary Authority, Ministry of Finance. By the impugned order the Revisionary Authority has confirmed Order in Original passed in appeal. Consequence of the impugned order is that Petitioners claim for duty drawback of Rs.2,52,429/- is refused.

2. The Petitioner is a manufacturer of circuit breakers and switch gears of high voltage. The Petitioner exported the goods under ten shipping bills dated 21 January 2008, 5 February 2008, 12 February 2008, 4 March 2008, 11 March 2008, 11 June, 2008, 5 June, 2008, 10 November, 2008, 27 November 2008 and 11 December 2008. The Petitioners claimed draw back at the rate of 4% on FOB value under S.S.No. 85.37 of the Drawback Schedule.

3. The Petitioner received communications from the Respondent – Assistant Commissioner of Customs, Drawback department in respect of the goods exported as per shipping bills above seeking information regarding product literature of the items/proof of voltage of the items etc. The Petitioner wrote to the Deputy Commissioner of Customs on 24 February 2009 as regards queries raised against drawback claim of shipping bills. The Petitioner gave information regarding circuit breakers as to what is the primary function and stated that the circuit breakers manufactured and exported by the Petitioner falls under S.S.No. 85.37.

4. The Petitioner received a communication from the Commissioner of Customs export under the subject “Query/Deficiency noted against drawback claim” and it was stated that the circuit breakers/switchgears did not fall under the entry S.S. No. 85.37 but falls under S.S. No. 85.35 and 85.36. The Petitioner was given a personal hearing by the Commissioner of Customs who passed an order on 31 July 2009. That the circuit breakers exported by the Petitioner under the concerned shipping bills was classified under Tariff item S.S.No.85.35 in the drawback schedule. The Assistant Commissioner of Customs by the impugned order held that the goods were not eligible for drawback under S.S. No.85.37 at the rate of 4% and 3.6% but under S.S. No. 85.35 at the rate of 3.2 % and 2.7%. Being aggrieved by this order Petitioner filed appeal before the Commissioner of Customs (Appeals). The

Petitioner reiterated the contentions that the goods exported was Petitioner's under the Shipping bill would fall under S.S.No. 85.37. As regards the drawback under S.S. No. 85.35 at the rate of 3.2% and 2.7% some amount has been paid to the Petitioner.

5. The Commissioner of Customs (Appeals) considered both entries and gave opportunity to the Petitioner and dismissed appeal confirming that the goods in question were under S.S.No. 85.37. The Petitioner thereafter filed a revision before Respondent no.2-Revisional Authority. The Respondent No. 2-Revisional Authority gave hearing to the Petitioner and considered the matter in light of the relevant entries under S.S.No. 85.35 and S.S.No. 85.37 and observed that the description of the goods in drawback schedule are aligned at four digit level and circuit breakers are specifically covered under heading 85.35 of the drawback schedule and they will have to be classified accordingly. The Revisional Authority by order dated 13 June 2012 dismissed the revision and confirmed the order in Appeal and the order in original. Challenging this order, the Petitioner is before us.

6. We have heard Mr. Sriram Sridharan, the learned counsel for the petitioner and Mr. Pradeep S. Jetly, learned Senior Advocate for the Respondent.

7. The learned counsel for the Petitioner has drawn our attention to the submission made before the Revisional Authorities. The Petitioner had raised contentions as regards the power of the Authority to question of classification of the goods under shipping bills having assessed and passing 'Let Export Order'. Secondly it was contended that the interpretation of the entries S.S.No. 85.35 and S.S.No. 85.37 whether the goods in question is erroneous and does not take into consideration the complete language of the entries. Thirdly it was contended that the order passed by the Commissioner (Appeals), Vadodara dated 31 December 1997 in respect of the same goods manufactured by the Petitioner they were classified under Ch. H. 85.37 of CETA, 1985 was not taken into consideration.

8. The learned counsel for the Petitioner has pressed two grounds before us i.e. the entries have not been properly interpreted and secondly the order of the Commissioner (Appeals) which was accepted both by the Petitioner and the department, though relied upon and referred to in the proceeding has not been considered at all.

9. We take the second contention first for consideration. The order in appeal arising out of the Order in Original No. Commr. (A)28/VDR/98 is placed on record. This order passed by the Commissioner (Appeals), Vadodara is that the Appeal in the case of

the Petitioner the description of the goods in the said order is SF6 circuit breaker or High Voltage Switch Gear which is the same involved in the present case. By Order in Original the said product was classified under entry S.S.No. 85.37 which the Petitioner had questioned. The Commissioner (Appeals) confirmed the classification as under entry S.S. No.85.37.

10. According to the Petitioner this order issued on 31 December 1997 was accepted by the Petitioner. Accordingly the Petitioner has modified the price structure of the product after this order. This order been placed on record in the present proceedings and reference of the same can be found in the ground of Appeal which have been reproduced in the Appellate order, and is also referred to in the Revisional Application.

11. Having gone through the three orders passed, we find that the grievance of the Petitioner that the order in Appeal dated 31 December 1997 has not been considered at all is justified. Though this order is noted in the impugned order there is no discussion as to what is the implication of the said order, which according to the Petitioner is *inter parte* binding. There is no discussion as to why the said order should not be taken into consideration or if taken into consideration what is the implication thereof.

12. In the light of the fact that there was a pre-existing order of the Commissioner (Appeals) *inter parte* regarding the same product, where different classification and impugned order has been arrived at and which supports the claim of the Petitioner, the same should have been considered and the Petitioner is right in contending that failure to do so has caused serious prejudice to the Petitioner. In this position, we are of the opinion that the proceedings need to be remanded to the Appellate Authority for considering the effect and implication of the order in Appeal dated 31 December 1997. Since the classification, under the impugned orders will have to be quashed and set aside to be considered afresh, we keep the contention of the parties regarding the interpretation of the entries open. As regards the contention of the power of the authorities to undertake these proceedings, this issue is not pressed before us. We also make it clear that our observations are not to be construed as the order dated 31 December 1997 has concluded the matter, but the reference to it is only to stress upon the need to remand the proceedings. Accordingly, impugned order dated 31 December 1997 passed by the Commissioner of Customs (Appeals) and order dated 13 June 2012 passed by the Revisionary Authority, are quashed and set aside. Proceedings are restored to the file of the Commissioner of Customs (Appeals).

13. Rule is made absolute in above terms. No order as to costs.

14. Considering the fact that the proceedings are pending for some time and they have been remanded, the Appellate Authority will make an endeavour to dispose of the proceeding at the earliest.

(GAURI GODSE, J.)

(NITIN JAMDAR, J.)