Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9730 OF 2003

Commissioner of Central Excise,
Delhi-IV ... Appellant

Versus

M/s. Sandan Vikas (I) Ltd. ...Respondent

J U D G M E N T

Dipak Misra, J.

The present appeal calls in question the legal substantiality of the judgment and order dated 23.04.2003 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short, 'the Tribunal') in Appeal No. E/577/2001-B whereby the Tribunal, placing reliance on the decision ***Sanden Vikas (India) Ltd. v. C.C.E., New***

Delhi[1], opined that the issue raised by the revenue is covered by the said decision and, therefore, the appeal was sans merit and did not warrant any interference.

2. At the outset, it is apt to note that when the matter was listed before a two-Judge Bench on 25.3.2015, the following order came to be passed:-

> "From the reading of the impugned order passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short, 'the Tribunal'), it transpires that the Tribunal followed decision of this Court in the case of this very respondent-assessee titled *Sanden Vikas (India) Ltd. v. Collector of Central Excise, New Delhi,* 2003 (153) E.L.T. 3 (S.C.) and on that basis, the appeal of the respondent was allowed.
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> The Revenue challenging the aforesaid order in the present appeal, contended that the judgment of this Court in *Sanden Vikas (India) Ltd.* (supra) requires re-consideration. This is specifically stated in the synopsis and the list of dates. We further find that on 08.12.2003, an order was passed by this Court admitting the present appeal, after condoning the delay in filing the appeal. In view thereof, we are of the opinion that the matter needs to be heard by a three-Judge Bench. Ordered accordingly.
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> The Registry is directed to obtain necessary instruction in this regard from Hon'ble the Chief Justice of India for listing of this matter before a three-Judge Bench."

[1] 2003 (153) ELT 3 (SC)

In view of the aforesaid order, the matter has been placed before us.

3. Be it noted, the decision in ***Sanden Vikas (India) Ltd.*** (supra) was the pronouncement between the same parties for a different period i.e. 20.3.1990 to 25.7.1991. The present appeal is primarily concerned with the period 1.8.1991 to 28.2.1993, during which notification no. 166/86-CE was applicable. Before we proceed to deal with the postulates in the notification, it is obligatory to understand what was decided in ***Sanden Vikas (India) Ltd.*** (supra). The facts in the said case were that the appellant-assessee therein, the respondent in the present appeal, is a manufacturer of car air-conditioning kits. It classified the said goods under Item No. 5 of Heading 8415 of the Schedule to the Central Excise Tariff Act, 1985 (for short, 'the Act') for the purpose of availing the benefit of exemption as given under Notification No. 166/86-CE dated March 1, 1986 (as amended from time to time). The appellant therein contended that it was only manufacturing parts of the air-conditioning kit and, therefore, the kit could not be treated as an air-conditioner. The Assistant

Collector, disagreed with the stance of the assessee and treated the same as air-conditioning system falling under Item No. 3 of the Heading 8415 of the Notification. On March 20, 1990, a new Entry, Item No.8, was added to the table of the Notification and thereafter the assessee classified the air-conditioning kits under the said Entry for the purpose of levy of excise duty. On October 1, 1990, the Assistant Collector, Central Excise, Division-I, Faridabad issued a notice to the assessee stating that under the said Entry i.e. serial no. 8, the sub-heading relating to compressor had not been included in the second column of the table and as the car air-conditioning kits include compressor they fall under Item No.3 (Heading No. 8415.00) of the Notification and accordingly the assessee was asked to show cause why the excise duty amounting to Rs.2,20,74,021.30 should not be demanded from it. The assessee replied to the said show cause notice and other show cause notices asserting that car air-conditioning kits, including compressor, manufactured by it, is a machinery especially designed to be used for air-conditioning of motor vehicle and as it is not usable as room air-conditioner, split

unit air-conditioner or package type air-conditioner, it cannot be classified in that group; the components of the car air-conditioner kit are nothing but parts of the car air-conditioner and the air-conditioning kit was shown as such in common parlance and, therefore, it was classifiable under serial no. 8 of the said Notification. The Assistant Collector, vide order dated January 24, 1992 rejected the stand put forth by the assessee and confirmed the demand which was affirmed by the Collector (Appeals) by his order dated July 13, 1992. On appeal being filed before the Tribunal, it dismissed the same. The two-Judge Bench of this Court referred to the column 3 of the table annexed with the notification and posed the question whether the car air-conditioning kit is classifiable under Item No. 3 or under Item no. 8 of the table of the said Notification. After reproducing the Item No. 3 of the said Notification, to which we shall refer to in detail at a later point of time, analysed the description of goods given against Item No.3 in column (3), referred to the amendment made on March 20, 1990 whereby in column (3), following words were added against Item No.5:-

> "other than the parts and accessories of car air-conditioner including car air-conditioning kit."

The Court observed that what is excluded from Item No.5 is mentioned against Item No.8, as per the portion quoted above. Thereafter, the two-Judge Bench referred to the Memorandum explaining the provisions in the Finance Bill, 1990 insofar as it relates to Chapter 84 and observed thus:-

> "13. A careful reading of the items afore-mentioned, in the light of the note under Chapter 84 in the Memorandum, leaves no doubt in our minds that exclusion of the afore-mentioned goods from the description of goods against Item No. 5 and their specification against Item No. 8, with effect from March 20, 1990, was with the intention of creating a specific entry in regard to car air-conditioners – both parts and accessories thereof as well as car air-conditioning kits.
>
> 14. As the air-conditioning kit is meant for providing air-conditioning in car and as the description of the goods first mentioned against column (3) which notes air-conditioners, we are inclined to take the view that the car air-conditioning kit fell within the meaning of the air-conditioners against Item No. 3 before March 20, 1990. This position continued till Item No. 5 was amended and Item No. 8 was inserted in the said Notification where specific entry with regard to parts and accessories of car air-conditioner and car air-conditioning kit was provided."

Thereafter, the Court opined that a specific Entry prevails over the general Entry and, therefore, w.e.f. March 20, 1990 till July 25, 1991, air-conditioning kits which comprises of various parts are classifiable under Item No. 8 of the said Notification. The Division Bench reproduced the Explanation (2) that was added on July 25, 1991, which reads as under:-

> "Explanation (2) – For the purposes of this notification, the term 'car air-conditioner kit' or 'car air-conditioning kit' shall exclude the kit or assembly of parts which contains automotive gas compressor with or without magnetic clutch."

While interpreting Explanation (2), the Court noted the submissions of the learned counsel and eventually held thus:-

> "18. To resolve the controversy, we shall revert to the wording of the said Explanation. It provides that for the purposes of the Notification, the term "car air-conditioner kit" or "car air-conditioning kit" shall exclude the kit or assembly of parts which contains automotive gas compressor with or without magnetic clutch. In our view, the Explanation has the effect of taking away the automotive gas compressor (with or without magnetic clutch) from out of the car air-conditioning kit. The car air-conditioning kit which comprises of parts of car air-conditioner remains as part of Item No. 8 of the notification. The Explanation cannot be so construed as to

> remove the term "car air-conditioner kit" or "air-conditioning kit" itself from Item No. 8 of the Notification. What follows is that 'car air-conditioning kit minus automotive gas compressor with or without magnetic clutch' will remain in the description of goods against Item No. 8 of the Notification and that the excluded part of the kit, namely, automotive gas compressor with or without magnetic clutch, will cease to be part of Item No. 8 and will be liable to duty separately."

4. It is submitted by Ms. Nisha Bagchi, learned counsel appearing for the appellant that the view expressed by the Division Bench in paragraph 18 wherein it has been held that car air-conditioning kit minus automotive gas compressor with or without magnetic clutch will remain in the description of goods against Item No. 8 and that excluded part of the kit, namely, 'automotive gas compressor' will cease to be a part of Item No.8 and would be liable to duty separately is not the correct conclusion and it requires to be reconsidered. It is urged by her that in view of the express language of the Explanation (2) which excluded car air-conditioning kits which contained automotive gas compressor, with or without magnetic clutch, from the purview of Item No.8 of the Notification, the entire kit would stand excluded from the scope of Item No.8

and thereby as a logical corollary the said air-conditioning kit which continues to be meant for providing air conditioning in cars would then revert to Item No. 3 which has been expressly held to cover car air-conditioning kits. Learned counsel has referred to Rule 2(a) of Rules of Interpretation and Section note 4 to Section XVI to highlight that while interpreting the section notes, the respondent would be disentitled to the benefit of the Notification since in the manner in which the goods came to be cleared, the compressor remained part of the air-conditioning kit. Elaborating the same, it is contended by her that the car air-conditioning kit cleared by the respondent was also having a corresponding clearance of gas compressor and the same constitute an air-conditioning unit and would be chargeable to duty as per serial no.3 of the Notification as held by this Court in paragraph 14 of the earlier judgment. Learned counsel has referred to certain facts how the respondent was able to supply the order during the period August, 1991 to February, 1993 to avail the benefit under serial no.8 of the said Notification. She has placed reliance

on ***Collector of Customs v. Maestro Motors***[2], for in the said decision, as per the learned counsel, it has been held that when in a Notification exemption is with reference to an Item in the First Schedule to the Customs Tariff Act, then the interpretative rules would equally apply to such Notification. Learned counsel has also submitted that the reliance by the respondent on Board's Circular No. 479/45/99 CX dated 17.8.1999 is irrelevant since the present dispute relates to period from 1991 to 1993 much prior to the issuance of the Board's circular.

5. In oppugnation of the aforesaid submissions, it is propounded by Mr. V. Lakshmi Kumaran, learned counsel for the respondent that there is no cavil over the fact that the respondent is a manufacturer of car air-conditioning kits and it is also not in dispute that classification of the kit falls under Chapter 8415.00 (which reads as air-conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated) of the Central Excise Tariff Act.

[2] (2005) 9 SCC 412

Learned counsel would contend that during the disputed period i.e. 1.8.1991 to 28.2.1993, the respondent was clearing the automotive gas compressors and the air-conditioning kits (without gas compressors) under different gate passes, which were supplied separately, and at different point of time and on that basis the respondent was discharging excise duty at the rate mentioned in serial no.1 of Notification No. 166/86-CE whenever automotive gas compressors were cleared and the rate mentioned in serial no.8 of Notification No. 166/86-CE, whenever car air-conditioning kits (without the gas compressors) were cleared. He has referred to relevant part of the Notification No. 166/86-CE, as it stood during the period of dispute, which we shall refer to at a later stage, and placed heavy reliance on the two-Judge Bench in ***Sanden Vikas (India) Ltd.*** (supra), especially, on paragraphs 16, 17 and 18 and supported it in entirety. It is put forth by him that the Explanation (2) to the Notification is not applicable where the car air-conditioning kit was cleared without the automotive gas compressor. According to him, Explanation (2) to Notification applies only in a situation where the

air-conditioning kit or assembly of parts contains automotive gas compressor (with or without magnetic clutch). Commenting on the Explanation (2), learned counsel would contend that the said Explanation means that where a car air-conditioning kit or assembly of parts contains an automotive gas compressor (with or without magnetic clutch) then such a car air-conditioning kit or assembly of parts stands excluded from the term "car air-conditioner kit" or "car air-conditioning kit" and hence, the said Explanation has no bearing if a car air-conditioning kit is cleared without the automotive gas compressor. Learned counsel has submitted that as the respondent had cleared the automotive gas compressor separately on payment of duty in serial no.1 and the car air-conditioning kit without the automotive gas compressor was cleared separately in serial no.8, it is not liable to pay any further excise duty. Elaborating further, it is urged by Mr. Lakshmi Kumaran that as the items were cleared independently they attract duty as given in serial no.1 of Notification. It is his stand that the respondent during the relevant period was not clearing the car air-conditioning kit with the automotive

gas compressor and any decision on this plea of the appellant, as far as the respondent is concerned, is only academic.

6. Learned counsel would further submit that the car air-conditioning kit consisting of the automotive gas compressor will be an air-conditioning machinery falling under Chapter 8415 of the Central Excise Tariff Act but not an 'air conditioner' itself falling under serial no.3 of the Notification. In that context, he has invited our attention to Circular No. 479/45/99-CX, which is urged to be clarificatory in nature. It is put forth by him that the stand of the revenue that the said Circular would not be applicable to the past transactions is unacceptable inasmuch as it really clarifies the position. Rebutting the submissions of the revenue that the presence of the automotive gas compressor in a kit will remove the kit away from serial no.8 of Notification No. 166/86-CE, it is canvassed by him that assuming the contention of the revenue is correct, the car air-conditioning kit with the automotive gas compressor will rightly fall under serial no.5 of the said Notification, for Explanation 2 begins by saying

"For the purposes of this notification, the term "car air-conditioner kit" or "car air-conditioning kit" shall exclude the kit or assembly of parts which contains automotive gas compressor with or without the magnetic clutch. In this context, it is his submission that car air-conditioning kit is mentioned in serial no.5 and serial no.8 and serial no.5 would exclude car air-conditioning kit only when the automotive gas compressor is not part of the kit and if the automotive gas compressor is a part of the car air conditioning kit, according to the contention of the revenue, it will not be "parts and accessories of the car air-conditioning including car air-conditioning kit" under serial no.8 and in that event, it will have to be under serial no.5. Elucidating the submission, learned counsel would contend, the exclusion under serial no.5, namely, "other than the parts and accessories of car air-conditioner including car air-conditioning kit" will therefore not apply for such air-conditioning kits comprising the automotive gas compressor and as far as car air-conditioning kits are concerned, serial no.5 and serial no.8 are mutually exclusive, for if kit cannot be covered under serial no.8, and

it has to be covered under serial no.5 and vice-versa.

7. Replying to the submissions of Rule of Interpretation to Central Excise Tariff Act, it is submitted by the learned counsel for the respondent that they are not applicable while interpreting the present Notification No. 168/86-CE since the said Notification has not borrowed its terms from the Tariff. In this context, the learned counsel has commended us to the decision in ***CCE, Jaipur v. Mewar Bartan Nirman Udyog***[3]. It is also urged by him that the decision in ***Maestro Motors*** (supra) is not applicable to the facts and circumstances of the present case since in that case the words used in the Excise Tariff and the Notification were identical, whereas in the present matter, the Explanation 2 has re-defined the term "car air-conditioner kit" or "car air-conditioning kit" and these terms are not part of the Excise Tariff, therefore, the principles of the Rules of Interpretation of the Tariff are inapplicable for the purpose of interpretation of the present Notification No. 166/86-CE.

8. On the basis of the aforesaid submissions, learned

[3] (2010) 13 SCC 753

counsel for the respondent would contend that there is no requirement for reconsideration of the judgment passed in ***Sanden Vikas (India) Ltd.*** (supra).

9. At the outset, it is imperative to appositely scrutinise the Notification No. 166/86-CE dated 1.3.1986 (as amended from time to time). In the case at hand, we are concerned with the amendment made in the said Notification vide Notification Nos. 75/90-CE dated 20.03.1990 and 68/91-CE dated 25.07.1991

10. As the period in question relates to the period after the amendment took place, it is apposite to reproduce the relevant part of the Notification No. 166/86-CE as it stood during the period of dispute. It reads as follows:-

S.N.	Heading or sub heading no.	Description of goods	Rate	Condition
01	8414.10	(i) Gas compressors of the kind used in air-conditioners including room air conditioners (window type), split unit air conditioners and package type air conditioners of capacity less not exceeding 7.5 tonnes (ii) Other gas compressors	Rs.6000/- per compressor Forty per cent ad valorem	-
03	8415.00	Air-conditioners including		-

		room air conditioners (window type), split unit air conditioners, and package type air conditioners, - (a) of capacity not exceeding 1.5 tonnes (b) of capacity exceeding 1.5 tonnes but not exceeding 3 tonnes (c) of capacity exceeding 3 tonnes but not exceeding 7.5 tonnes (d) of capacity exceeding 7.5 tonnes but exceeding 10 tonnes (e) of capacity exceeding 10 tonnes but not exceeding 15 tonnes	 Rs.12,000 per air conditioner Rs.15,000 per air conditioner Rs.33,000 per air conditioner Rs.70,000 per air conditioner Rs.74,000 per air conditioner	
05	84.15, 84.18, 84.19, 84.76.91, 8481.10, 8481.91, 8536.10, 9032.11 or 9032.91	Parts and accessories of refrigerating and air conditioning appliances and machinery, all sorts, other than the parts and accessories of car air conditioner including car air-conditioning kit	Forty per cent ad valorem	-
08	84.15, 84.18, 84.19 84.76.91, 8481.10, 8481.91, 8536.10, 9032.11 or 9032.91	Parts and accessories of car air conditioner including car air-conditioning kit	Sixty five percent ad valorem	-

11. Be it stated that air conditioners including car air-conditioning kits fall under Chapter 8415.00 of Central

Excise Tariff Act, 1985. The Explanation to the Notification was inserted on 25.07.1991. During the period in dispute, as the factual matrix would unveil, the respondent-assessee had cleared the car air-conditioning kits without gas compressors under serial no.8 and automotive gas compressors under serial no. 1. To put in other words, the respondent has paid ad valorem excise duty at 65% on the car air-conditioning unit without gas compressors and 40% ad valorem duty on the gas compressors. The stand of the revenue is that in terms of Explanation 2 read with Rule 2(a) and Section Note 4 to Section XVI, the goods manufactured would be covered by serial no.3 of the aforesaid Notification and they were chargeable under the same. Similar issue had arisen and this Court has dealt with it in paragraph 18. Before we proceed to scrutinise the correctness of the said authority, we have to clear the maze, whether interpretation as per Rule 2(a) would be applicable to the Notification. Rule 2(a) of Rules for the Interpretation of Schedule reads as follows:-

> "2. (a) Any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that, the

> incomplete or unfinished goods have the essential character of the complete or finished goods. It shall also be taken to include a reference to those goods complete or finished (or falling to be classified as complete or finished by virtue of this rule), removed unassembled or disassembled."

12. Learned counsel for the appellant has also referred to Section Note 4 to Section XVI, which reads as follows:-

> "4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function."

13. The question is whether the Rules of Interpretation would apply. Learned counsel for the appellant has heavily relied on ***Maestro Motors*** (supra). In the said case, after reproducing Rule 2(a), the two-Judge Bench has opined thus:

> "Thus, as per this interpretative rule, even though an article is incomplete or unfinished when it is presented for clearance, if that article has the essential character of the complete article and/or even though the complete or finished article is presented in an unassembled or dissembled form the classification must be as a complete article. In this case, it is fairly not being denied that the components were imported in CKD packs.

> Thus what was imported was completely knocked-down cars. The components imported had the essential character of a complete car even though presented in unassembled form. As per interpretative Rule 2(*a*) even though presented unassembled they have to be classified as a complete article."

14. Learned counsel for the respondent has drawn inspiration from ***Mewar Bartan Nirman Udyog*** (supra). In the said case, the Court posed the question whether the respondent-assessee was entitled to claim benefit of exemption Notification No. 3/2001-C.E dated 1.3.2001. The assessee in the said case had claimed exemption under serial no. 200 of the said Notification which was denied by the department on the ground that trimmed or untrimmed circles of brass cannot fall under serial no. 200 but they fall under serial no. 201. The Court noted the fact that if the produce in question falls under serial no. 200, then the rate of duty is nil. The Court extracted the relevant part of the notification and held that serial no. 200 would apply and assessee would be entitled to claim nil rate of duty under the said notification. At that juncture, the Court opined that:-

> "5. We may also point out at this stage that it is well settled position in law that exemption Notification has to be read strictly. A notification of exemption has to be interpreted in terms of its language. Where the language is plain and clear, effect must be given to it. While interpreting the exemption notification, one cannot go by rules of interpretation applicable to cases of classification under the Tariff. Tariff items in certain cases are required to be interpreted in cases of classification disputes in terms of HSN, which is the basis of the Tariff. In this case, we are not concerned with interpretation of Tariff. In fact, as stated above, the product in question falls under Chapter Heading 74.09. It is the dichotomy which is introduced by the exemption Notification which needs to be interpreted. Items made from copper attract duty at the rate of Rs.3500 PMT whereas circles made from brass attract nil rate of duty. As stated above, in this case, the Department has not disputed the fact that the circles were manufactured by the assessee from brass. This is expressly recorded in the findings given by the Tribunal."

15. The aforesaid two decisions are to be understood regard being had to the context in which they are delivered. In ***Maestro Motors*** (supra), it is elucidated that one has to examine the notification and then refer to serial number of the notification and the item number in the first schedule of the Act and if they are identical and *pari materia*, rules of interpretation will apply. Rules of interpretation may not be applicable if the notification commands and require a

different understanding. It needs no special emphasis to state that rules or principles of interpretation are always subject to context and not binding commands on iron cost imperatives. Therefore, we do not perceive any conflict between the two decisions which deal with rules of interpretation. It has to be understood in the context.

16. We have already reproduced Rule 2(a) and Section Note 4 to Section XVI. Rule 2(a) of Rules of Interpretation consists of two parts. First part stipulates that incomplete or unfinished goods would fall in heading relating to the completed goods provided the incomplete or unfinished good bears the essential character of the complete or finished goods. Second part predicates unassembled or assembled goods can be treated as goods complete or finished goods. In this context we may usefully refer to Rule 1 of the Rules of Interpretation, which is as follows:-

> "1. The titles of Sections and Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the provisions hereinafter contained."

17. Thus, Rule 1 of the Rules of Interpretation lays down that for legal purpose classification shall be determined in accordance with the terms of headings and any relative section or Chapter Notes, provided such headings or Notes do not otherwise require a different interpretation.

18. Keeping the aforesaid in view and the context, we are required to interpret the serial numbers of the notification. On a scanning of the Notification, it is perceptible that the gas compressors are specified and taxable on the heading serial no.1. Serial no.3 deals with air conditioners including room air-conditioners. Needless to say that the air-conditioner is a distinct and separate commodity sold and purchased and is distinguishable from the gas compressors or kits. Serial no.5 deals with parts and accessories of refrigerator and air conditioning appliances and machinery of all sorts. Thus, serial no.5 would cover air-conditioner kits, but would not include compressors, for they are specifically covered under serial no.1. It is apt to note here that parts and accessories of a car air-conditioner including air-conditioning kit, are expressly excluded from serial no.5. The reason for exclusion is that car

air-conditioners and car air-conditioning kits have been included in serial no.8. Car air-conditioner or car air-conditioning kits cannot per se perform essential functions of an air-conditioner until and unless they are fixed in a car. A car air-conditioning is obtained by fitting part by part, compressor is fitted above engine, condenser is fitted in front of the radiator, cooling coil is fitted inside the car, fan is fitted in front of cooling coils and then all theses parts are connected by copper pipes to complete the cycle. If this exercise is not carried out, they would be parts and accessories of car air-conditioners and not a car air-conditioner itself. The assembly is possible when the kit and the compressor are installed and attached to the car.

19. In this context, one is required to x-ray the language used in Explanation (2) and understand the same. The Explanation states that for the purpose of Notification, "car air-conditioning unit" or "car air-conditioning kit" shall exclude the kit or assembly of parts which contains automotive gas compressor with or without the magnetic clutch. The two-Judge Bench in ***Sanden Vikas (India) Ltd.*** (supra) has understood the said Explanation to mean

that it has the effect of taking away the automotive gas compressor (with or without magnetic clutch) from out of the car air-conditioning kit. It is further held that the car air-conditioning kit which comprises of parts of air-conditioner remains as part of item no.8 of the Notification and the Explanation cannot be so construed as to remove the term "car air-conditioner kit" or "car air-conditioning kit" itself from item no.8 of the notification. What has been further opined is that the air-conditioning kit minus automotive gas compressor with or without magnetic clutch will remain in the description of goods against item no.8 of the notification and that the excluded part of the kit, namely, automotive gas compressor with or without magnetic clutch will cease to be a part of item no. 8 and will be liable to duty separately.

20. Ms. Nisha Bagchi, learned counsel appearing for the department would contend that in view of the express language employed in Explanation (2) which excludes car air-conditioning kit which contain automotive gas compressor with or without magnetic clutch from the purview of item no.8 of the Notification, the entire kit would

stand excluded from the scope of item no.8 and the said car air-conditioning kit which continues to be meant for providing air-conditioning in cars would revert to item no. 3, which has been expressly held to cover car air-conditioning kits. It is urged by her that the interpretation placed by the two-Judge Bench causes violence to the plain and unequivocal language expressed in the Explanation (2) to the Notification. To appreciate the said submission, it requires a careful scrutiny of the language used in the Notification. The Notification consciously and deliberately treats a complete or finished air-conditioner as a dutiable entity under serial no.3, but kit of the same air-conditioner is not treated at par and similar to a complete or finished air-conditioner dutiable under serial no.3. The air-conditioners' parts and the accessories including air-conditioner kits are dutiable under serial no.5, if it relates to a window, split or packaged air-conditioner. The compressor, however, is liable to duty as per the rates specified in serial no.1. Car air-conditioning kits are dutiable under serial no. 8 and after insertion of Explanation 2, the car air-conditioning kits without the

compressor would be dutiable in serial no.8 and the compressor itself would be dutiable separately under serial no.1. This is the intention of the notification. Regard being had to the notification, which we have already spelt out in the context of notification, it can safely be stated that the accessories and parts including kits, compressors and the finished or complete air-conditioners having treated separately under different serial numbers and the notification intended to maintain the said distinction between a completed and a finished produce and the kits and compressors which can be assembled and installed in a car to function as a car air-conditioner after necessary efforts and working including gas charging. Under these circumstances, the submission of the learned counsel for the revenue is that while interpreting the notification, Rule 2(a) and Section Note 4 to Section XVI would be applicable does not commend acceptance. In our considered opinion, applying Rule 2(a) of the Rules of Interpretation to the Notification in question, would be contrary to the legislative intent.

21. Mr. Lakshmi Kumaran, learned counsel for the

respondent, as we have indicated earlier, has drawn our attention to Circular No. 479/45/99 CX dated 17.8.1999. The relevant part of the said circular reads as follows:

> "Doubts have been expressed as to whether fitting of duty paid parts and components of an air-conditioner in a car amounts to manufacture of car air conditioner.
>
> .....
>
> 2. The matter has again been examined by the Board. It is observed that in the course of the activity of fitting the parts and components of an air-conditioner in a car, they are fitted part by part at different places in a car engine and elsewhere in the car. Though by virtue of such fitments an ordinary car is converted into an air-conditioned car, but at no point of time & car-conditioner as a separate and distinct commodity comes into existence. It is thus clarified that the activity of acquiring duty paid parts and components of a car air-conditioner from the market and fitting the same at appropriate positions in a car does not result into manufacture of a new excisable item such as car air-conditioner"

Relying on the same, learned counsel for the respondent submitted that though the said circular has been brought at a later stage, but it really exposits the intention of the notification. The question of retrospective applicability or not does not arise, for the simon pure

reason is it really clarifies the position.

22. Having regard to the analysis we have made, the purport and impact of the Notification, the question that would arise for consideration is whether ***Sanden Vikas (India) Ltd.*** (supra) lays down any incorrect proposition of law. In the said decision, in paragraph 18, which we have already reproduced, the two-Judge Bench, construing the Explanation, has laid down that the expression cannot be so construed as to remove the term "car air-conditioner kit" or "car air-conditioning kit" itself from item no.8 of the Notification. What follows is that car air-conditioning kit minus automotive gas compressor with or without magnetic clutch will remain in the description of goods against item no.8 of the Notification and the excluded part of the kit, namely, automotive gas compressor with or without magnetic clutch will cease to be a part of item no.8 and will be liable to duty separately. As we understand from the said conclusion, a car air-conditioning kit, if it contains an automotive gas compressor with or without magnetic clutch, the kit part will meet the description of goods against item no.8 of the Notification and the automotive gas

compressor with or without magnetic clutch will be liable to duty separately and it will go away from description of Item no.8. To elaborate, if a car air-conditioning kit has both, there has to be two sets of duty; one for the kit and the other for the automotive gas compressor with or without magnetic clutch. Learned counsel for the Revenue would submit that such an interpretation is contrary to the Explanation (2) as it clearly lays the postulate that the car air-conditioner kit or car air-conditioning kit shall exclude the kit or assembly or parts which contains automotive gas compressor with or without magnetic clutch and when there is total exclusion of the kit, and hence, it gets out of item no.8 of the Notification. In a sense, the submission is if the kit contains the automotive gas compressor, it shall stand excluded and will be liable to duty separately. Learned counsel for the respondent has submitted that in that event, it would not fall under serial no.8, for if kit cannot be covered under serial no.8, it has to be covered under serial no.5 and vice versa. Expatriating the said submission, it is urged by him that serial no.8 lays duty i.e. 65% ad valorem as compared to serial no.5 40% ad valorem, and the

respondent has paid duty as per serial no.8 at the rate of 65% and would be entitled to refund as it has paid higher duty under serial no.8 of the notification. We have noted the submission for the sake of completeness though we do not intend to address the same.

23. According to us, if a manufacturer sells the kit and the automotive gas compressor as one unit of transaction, it will get out of serial no.8. If a manufacturer sells the kit and the automotive gas compressor separately by different invoice or by separate pricing, we do not see any reason for exclusion of the air-conditioning kit from the serial no.8 because there are two transactions and the kit is charged as per serial no.8 and compressor is charged as per serial no.1. There is no dispute over the fact that one can buy the automotive gas compressor with or without magnetic clutch with the kit, and both can also be purchased separately from different manufacturers. What the two-Judge Bench has said is that an air-conditioning kit minus automotive gas compressor with or without magnetic clutch will remain in the description of goods against item no.8 of the Notification and that the excluded part of the kit, namely,

automotive gas compressor with or without magnetic clutch will cease to be a part of item no.8 and will be liable to duty separately. Thus, the Division Bench has quite categorically stated that if the air-conditioning kit does not contain automotive gas compressor with or without magnetic clutch, duty is paid as per item no.8 and if it contains the automotive gas compressor with or without magnetic clutch, it will not come under item no.8.

24. In our view, the ratio laid down in the said decision cannot be found to be erroneous but as a matter of clarification, we say that if a kit and compressor are sold in a singular invoice or in one pricing, it will go out of item no.8 and duty will be paid separately, but if there are two invoices for separate pricing, the air-conditioning kit would come under serial no.8 and the automotive gas compressor with or without magnetic clutch will be liable to duty separately. We may hasten to clarify that if there is a combined sale, which serial item it will fall, being not necessary in this case, we are not inclined to dwell upon the same. We have only clarified the two-Judge Bench decision in ***Sanden Vikas (India) Ltd.*** (supra) to the above effect.

25. Coming to the case at hand, it is the case of the appellant that the respondent-assessee has sold the kit and compressor separately and that position having been accepted by the tribunal, we do not find any error in the order passed by the authorities and the Tribunal.

26. Resultantly, the civil appeal stands disposed of with the clarification of the decision in ***Sanden Vikas (India) Ltd.*** (supra) as per paragraph 24. There shall be no order as to costs.

.....J.
[Dipak Misra]

.....J.
[R.K. Agrawal]

....., J.
[Prafulla C. Pant]

New Delhi
July 1, 2015