

Collector of Central Excise Vs. Chitra Indus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-16-1996

Reported in : (1997)(92)ELT571TriDel

Appellant : Collector of Central Excise

Respondent : Chitra Indus.

Judgement :

1. In this appeal filed by the Revenue, the matter relates to the classification of the goods - "rotors and stators." The respondents M/s. Chitra Indus, were engaged in the manufacture of rotors and stators. These rotors and stators were used in the manufacture of monoblock power-driven pumps. The assessee had claimed exemption in respect of these rotors and stators under Notification No. 65/86-C.E., dated 10-2-1986 (as amended) on the ground that their rotors and stators were parts of power-driven pumps which were primarily designed for handling water. The Asstt. Collector of Central Excise, Coimbatore, had classified these rotors and stators under Heading No. 85.03 of the Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as the Tariff) which covered "parts suitable for use solely or principally with the machines of Heading Nos. 85.01 and 85.02". Heading No. 85.01 covered "Electric motors and generators (excluding generating sets)." Electric generator sets and rotary converters were classifiable under Heading No. 85.02. The Asstt. Collector of Central Excise, Coimbatore, who had adjudicated the matter observed that stators and rotors were component parts of electric motor and they were classifiable under Heading No. 85.03 in terms of Note 2(b) of

Section XVI. He further observed that as they were parts of electric motors and not parts of power-driven pump, the benefit of exemption Notification No. 64/86-C.E. was not available to them. The Collector of Central Excise (Appeals), Madras, however, following an earlier decision held that classification of rotors and stators under Heading No. 85.03 was correct. He further observed that as the Department has consistently held that no electric motor comes into existence in case of manufacture of monobloc pump sets, no duty was payable at the stage of electric motor after proper duty had been paid on rotors and stators.

2. The matter was posted for hearing on 16-10-1996, when Shri P.K.Jain, SDR, appeared for the appellants/Revenue. No one is present for the respondents, M/s. Chitra Indus., to whom the notice for today's hearing has been issued on 26-9-1996 and had been acknowledged by them on 30-9-1996.

3. We have carefully considered the matter. We find that the similar issue has come up for our consideration in Appeal No. E/1883/87-B in the case of CCE, Ahmedabad v. Jyoti Electrical Motor Ltd. and the order had been dictated in the open court on 25-9-1996. In that case the Asstt. Collector of Central Excise, who had adjudicated the matter, had held that the rotors and stators which were being manufactured by the appellants in that case were separately classifiable under Chapter Heading No. 85 and they were primarily designed to create a motive power and even when this motive power is generated in the monoblock pump, it was to be correctly classifiable under Heading No. 85.03. The Collector of Central Excise (Appeals) had set aside the order of the Asstt. Collector and had taken a view that the rotors and stators were part of the monoblock pump. We have not agreed with the findings of the learned Collector of Central Excise (Appeals) and have held that the rotors and stators even if they are specifically produced for power-driven pumps had to be classified under Heading No. 85.03 as parts suitable for use with the electric motors. Paras 7 to 12 from that decision are extrated below : "7. Rotors and stators are marketable commodity and had to be assessed on their own merit. It is the settled position that the goods even if they are used captively they had to pay CED at the appropriate rate before their clearance for captive use. In this case, at the stage of the rotors and stators even if they are specifically produced for power-driven pump, their classification under

Heading No. 85.03 could not be disputed.

8. As regards Heading No. 84.13, it relates to pumps for liquids, whether or not fitted with a measuring device; liquid elevators. The power driven pumps even when they are cleared without motor are classifiable under this heading.

9. The Id. Advocate had referred to the Tribunal's decision in the case of LPN Indus, v. CCE -1995 (79) E.L.T. 681 (Tribunal). This was a matter under the old Central Excise Tariff where the Tariff entry was different. The Tribunal had held that all the evidence on record pointed to the fact that rotors and stators manufactured by the appellants were of a specific design for use in monoblock pump. It has also been brought to our notice that those rotors and stators were not interchangeable and could not be used in electric motors.

As the tariff had undergone the change and as it is settled position that question has to be based on the tariff entry as is in force and the decisions under the old tariff are not applicable to the new tariff, we find that this decision is of no assistance in the case of respondents.

10. As we have discussed above, although motivating force is the essential application of the pump, it is not necessary that in all cases both the power part and the motivating part should be together. It is only in the monoblock pump that both motivating force and water drawing part is housed together.

11. The Gujarat High Court in Special Civil Application Nos.

4656/86, 4658/86 & 1139/87, dated 7th September, 1987 in the case of Saga Windel Engineers had recorded at Page 5 of their judgment as under : "In view of the above, it is now obvious that the rotors and stators used in the manufacture of monoblock pumps fall within Tariff Item 30(D) and not 30(A). That being so, the impugned show cause notices issued by the concerned revenue authorities' officer against the petitioners calling upon them to show cause why rotors and stators should not be assessed to duty under Tariff Item 30(A) will not survive. Mrs. Mehta, the Id. Senior Central Government Standing Counsel is unable to contend otherwise. With effect from 1st March, 1986 electric motors and parts suitable for

use solely and principally with electric motors fall under Headings 85.01 and 85.03 respectively of the new tariff. Heading No. 85.01 refers to electric motors and generators (excluding generating sets) whereas Heading No. 85.03 refers to parts suitable for use solely and principally with the machines of Heading No. 85.01 or 85.02. We are not concerned with the goods described in Heading No. 85.02. Rotors and stators being parts suitable for use with electric motors would fall within Heading 85.03 and be liable to duty at the rate specified in column (4). Mr. Trivedi, the Id. Advocate for the petitioners, concedes the fact that rotors and stators manufactured for use in monoblock pumps would be liable to duty under Heading 85.03.

12. The Hon' Supreme Court in the case of Elson Machines Pvt. Ltd. v. U.O.I. - 1988 (38) E.L.T. 571 (S.C.) had observed as under :- "4. For the financial year 1 April 1980 to 31 March 1981 the appellant had disclosed a clearance value of Rs. 13,43,443.55 on account of electric motors for home consumption and a clearance value of Rs. 6,51,138.50 on account of electric motors "for captive consumption" in the manufacture of monoblock pumps. It was contended by the appellant that the electric motors used for making monoblock pumps could not be taken into consideration when calculating the clearances eligible under Notification. According to the appellant the captive consumption did not amount to clearance. The claim was disputed by the Department, which relied on Explanation V to the aforesaid Notification dated 19 June 1980. The explanation declared: "Explanation V - Where any specified goods (hereinafter referred to as inputs) are used for further manufacture of specified goods (hereinafter referred to as finished goods) within the factory of production of inputs and where such inputs and finished goods fall under the same item of the said First Schedule to the said Act, the clearances of such inputs for such use shall not be taken into account for the purposes of calculating the aggregate value of clearances under this notification." The Appellate Tribunal observed that in terms of the Explanation the clearances of inputs could not be taken into account for calculating the aggregate value of clearances only when the inputs and finished products fall under the same item of the First Schedule to the Act.

It pointed out that while electric motors were mentioned under Tariff Item 30, power-driven pumps were specified under Tariff Item 30A. It said that consequently the electric motors captively consumed as inputs in the manufacture of power driven pumps could not be excluded when determining the appellant's clearances. The appellant urged that the appellant had mistakenly stated that electric motors had been used for monoblock pumps whereas only rotors and stators which were integral components of monoblock pumps had been used, and that, therefore, the same Tariff Item was attracted, thus entitling the appellants to the concession. The Submission was rejected by the Appellate Tribunal. Accordingly, it found that the appellant had exceeded the limit stipulated by Notification No. 80/80-C.E., dated 19 June 1980, and was, therefore, disentitled to the concession.

5. It is contended before us that the Appellate Tribunal erred in rejecting the submission of the appellant that the goods manufactured by the appellant did not entitle it to the benefit of Explanation 5 of the Notification. It is urged that the goods in question were rotors and stators, that they were integral components of monoblock motors and could not be considered as components of general purpose Motors and therefore fell within the same Tariff Item as monoblock pumps. The question has been considered by the Appellate Tribunal. It is a question of fact and we do not propose to entertain it at this stage.

6. It is then urged that stators and rotors should be considered under Tariff Item 68, which is a residuary item. The Appellate Tribunal has proceeded on the basis that what was manufactured by the appellant were electric motors. It is only in the alternative that it considered the submission of the appellant that the goods should be regarded as rotors and stators. In the circumstances recourse cannot be had to Tariff Item 68 by the appellant." 4. Following the above decision, we are of the view that the Collector of Central Excise (Appeals) has correctly confirmed the classification of the rotors and stators under Tariff Heading No. 85.03. He had further set aside that part of the order of the Asstt. Collector which related to the classification of electric motors either on provisional basis or on payment of duty under protest. He has taken a view that the Department had consistently held that no electric motor comes into existence in case of manufacture of monoblock pump

sets. We do not find any infirmity in this view also.

5. Taking all the relevant considerations into account, there is no merit in this appeal filed by the Revenue and the same is rejected.

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