

Collector of Central Excise Vs. El. P. Em. Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-24-1996

Reported in : (1997)(92)ELT604TriDel

Appellant : Collector of Central Excise

Respondent : El. P. Em. Industries

Judgement :

1. These are six appeals filed by the Revenue being aggrieved with two separate Orders-in-Appeal - one Order-in-Appeal No. 116 & 117/87 (CBE), dated 9-6-1987 involving two appeals filed by M/s. El. P. EM.Industries, Coimbatore and M/s. Geedee Stoll Pvt. Ltd. Coimbatore, and the other, Order-in-Appeal No. 126 to 129/87 (CBE), dated 22-06-1987 involving four appeals filed by four manufacturers M/s. Dual Engineering Industries, M/s. Subbaia Foundry and M/s. Karthikeya Foundry, M/s. Karthikeya Engg. Enterprises, all of Coimbatore. The Revenue had filed the original appeal in time but as required under the rules they had also filed supplementary appeals, which were received beyond the period of limitation. As the original appeal has been filed in time, we condone the delay in filing the supplementary appeals and take up all the six appeals for hearing together. As in all these six appeals common questions of facts and law are involved they were heard together and are being disposed of by this common order.

2. The matter relates to the assessments of prime mover part of monoblock pump. The adjudicating authority in all the cases had taken a view that prime mover in a monoblock pump is an electric motor classifiable under Heading No. 8501 of the

Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as the 'Tariff').

3. The Collector of Central Excise (Appeals) in all the cases had taken a view that the prime mover portion of the monoblock pump was not classifiable under Heading No. 85.01 of the Tariff.

4. The matter was posted for hearing on 24-10-1996. Shri M. Jayaraman, JDR is present for the appellants/Revenue. All the respondents had prayed for decision on merits.

5. Shri M. Jayaraman, JDR submitted that the Collector of Central Excise (Appeals) had relied on the Boards' instructions, which were applicable only with regard to the old Central Excise Tariff when rotors and stators were classifiable under Tariff Item 30D of the erstwhile Central Excise Tariff and the Board had clarified that after the rotors and stators had paid appropriate duty as applicable to the parts of electric motors, no further duty was chargeable when such duty-paid rotors and stators were used in the manufacture of monoblock pump where electric motor in an identifiable form did not come " into existence. It was his submission that prime mover in the monoblock pump was electric motor and was rightly classifiable under Heading No. 85.01 of the Tariff.

6. We have carefully considered the matter. In the manufacture of monoblock pumps, rotors and stators are used and such rotors and stators are fixed on the same shaft on which the pump portion is installed. The wound rotors and stators as encased function as the prime mover. Such wound rotor and stators could not be considered as electric motors as commercially understood and marketed. Before the switch over to the new Central Excise Tariff, the rotors and stators were classifiable under Item No. 30D of the erstwhile Central Excise Tariff as parts of the electric motors. When such duty-paid rotors and stators were used in the manufacture of electric motors, the duty-paid by the rotors and stators was available for set off while paying excise duty on the electric motors. In the case of monoblock pumps, however, the duty-paid rotors and stators were used but electric motor in an identifiable form as commercially understood and as marketed did not come into existence. The rotors and stators were taken as part of the

electric motors even when the electric motors as such did not come into existence in the monoblock pump. They were not taken as part of the pump. This position was clarified by the Ministry in their Circular referred to by the Collector of Central Excise (Appeals) in his Orders-in-Appeal No. 40/87 to 48/87 (CBE), dated 10-03-1987 which he had followed in the impugned Orders-in-Appeal. The said circular No.147/8/80/CX. 4, dated 4-2-1981 is extracted below : "In the case of monoblock pumps, where electric motor does not come into existence in an identifiable manner, and is not separable its classification under Item No. 30 may not be warranted. In such cases, the casing and shaft is common to the pump as well as to the rotors and stators. Although the electric motor as such does not come into existence independently in such instances, the manufacture of rotors and stators cannot be denied. Rotors and stators forming component parts of monoblock pump in question will have to pay duty under Tariff Item 30(4) [presently Item No. 30(D)] before their removal for the manufacture of monoblock pumps".

7. Under the new Central Excise Tariff, electric motors and generators (excluding generating set) were classifiable under Heading No. 85.01; electric generating sets and rotary connectors were classifiable under Heading No. 85.02 and parts suitable for use solely or principally with the machines of Heading No. 85.01 or 85.02 were classifiable under Heading No. 85.03.

8. Although the issue involved before us is not the classification of rotors and stators but of the prime mover parts in the monoblock pump, we have dealt with this aspect of the matter for clarifying the issue involved. In this connection, we may also refer to the Gujarat High Court's decision in the case of Saga Windel Engineers (Special Civil Application No. 4656 of 1986, decided on 7-9-1988). The Gujarat High Court at Page 5 of their decision had observed as under :- "Rotors and stators being parts suitable for use with electric motors could fall within the Heading No. 85.03 and be liable to duty at the rate specified in Col. 4. Mr. Trivedi, Id. Advocate for the petitioner concedes the fact that rotors and stators manufactured for use in monoblock pumps would be liable to duty under Heading No. 85.03 in view of the concluded controversy by the Tribunal's Order of 5th April, 1988 rejecting the appeal of the petitioner in the first petition (refer to the Tribunal's order No. M.159/88, dated 5-4-1988 in appeal No. E/1520/84 B1).

9. Reference may also be made to the case of Elson Machines Pvt. Ltd. v. CCE - 1988 (38) E.L.T. 571 (SC).

10. The Collector of Central Excise (Appeals) had taken a view that the prime mover portion of the monoblock pump, which are not cleared incomplete or unfinished could not be classified under sub-heading No.8501.00. While coming to this decision in addition to the factual aspects, he had relied upon the Board's instructions extracted above.

We consider that the factual aspect of the matter had not undergone any change with the introduction of the new tariff. We do not find any infirmity in the views taken by the Collector of Central Excise (Appeals) and accordingly, we do not find any merit in all these six appeals filed by the Revenue and all the six appeals are rejected.

Ordered accordingly.

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