

Collector of Central Excise Vs. Kishor Pumps Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-25-1996

Reported in : (1997)(91)ELT91TriDel

Appellant : Collector of Central Excise

Respondent : Kishor Pumps Pvt. Ltd.

Judgement :

1. Collector of Central Excise, Pune, has filed this appeal against the order passed by the Collector (Appeals), Bombay, confirming the order passed by Assistant Collector, Pune, dropping certain demands under four show cause notices.

2. Respondent, engaged in the manufacture of Power-driven pumps (T.I.30A) and Agitators (T.I. 68) has been purchasing electric motors. The dispute in the appeal relates to the period 1-4-1981 to 31-12-1983 and 1-4-1984 to 3-6-1984. During these periods, respondent was clearing Agitators along with electric motors, on payment of excise duty on the value of Agitators and clearing PD Pumps alongwith Electric Motors on payment of excise duty on the value of PD Pumps. Value of Electric Motors was not being included in the assessable value of Agitators and PD Pumps. Electric Motors were supplied along with Agitators or PD Pumps only at the request of buyers. Respondent was also clearing Agitators and PD Pumps without Electric Motors in cases where buyers did not require the latter. On 9-3-1984, Superintendent of Central Excise, Mahindra Owen Range issued two notices to respondent to show cause against demand of excise duty for the period 1-4-1981 to 31-12-1983 alleging that respondent had cleared 185 Electric Motors

along with PD Pumps and with 23 Agitators without adding the value of the Electric Motors in the assessable value of PD Pumps or Agitators as the case may be. On 16-6-1984 and 9-7-1984 similar show cause notices for the period 1-1-1984 to 3-6-1984 had been issued. Respondent resisted the notices contending that Electric Motors not being parts of Agitators or PD Pumps and being bought out items supplied only at the option of buyers, the value of Electric Motors could not be added to the assessable value of such goods. It was also contended that a part of the claim was barred by time. Respondent was following invoice price procedure in regard to Agitators. It was pointed out that Tariff Advice 33/77, dated 7-9-1977 required that only where a submersible pump set containing also duty paid Electric Motor if cleared together after assembly from the factory, entire assembly would be liable for duty under Tariff Item 30A and did not apply to respondent.

3. Assistant Collector held that it is clear from tariff description that duty is attracted in PD pumps only and not prime movers, that is motors except in the case of Monobloc Pump set, that respondent was supplying bought out Electric Motors only where buyers asked for and even then they were not fitted to the P.D. Pumps or Agitators and hence the value of Electric Motors was not required to be added to the assessable value of PD Pumps or Agitators. He also held that proviso to Section 11A(1) of the Central Excise Act, 1944 (for short, the Act) was not applicable since there was no misstatement or suppression of facts. Collector (Appeals) agreed with the reasoning and conclusion of the Assistant Collector.

4. It is contended by Shri T.R. Malik, SDR that PD Pumps contain slot for fitting Electric Motors and neither PD Pumps nor Agitators can function without Electric Motor which is prime mover and hence must be regarded as integral part of the PD Pumps and Agitators and hence the value of Electric Motors has to be added to the assessable value of excisable goods in this case. According to him, non-disclosure of clearance of bought-out Electric Motors along with PD Pumps and Agitators was deliberate and with intention to evade duty and as such, larger period of limitation under the proviso to Section 11A of the Act is available. These contentions are rebutted by learned counsel for respondent. In *Collector of Central Excise v. Lawkim Pvt. Ltd.* - 1987 (31) E.L.T. 700 (Tribunal) the question was whether the value of TOP (Thermal Overloading Protectors) affixed to sets of

stator and rotor was to be added to the assessable value of the latter. It was found that TOP was fixed in the coil windings and became an integral part of stator or rotor and so fixed even while the latter was under process of manufacture and before it was fully finished and hence the value of TOP was to be added. In *Tata Unisys Ltd. v. Collector of Central Excise - 1994 (73) E.L.T. 96 (Tribunal)* while dealing with the question whether the value of systems software supplied along with hardware (along with a complete computer system) was to be added to the assessable value of the latter, the Tribunal noticed that both were being supplied as per single order, the price was for the configuration, warranty included warranty for software and observed that customers wanted the whole system to be operated and accordingly placed order for the hardware and also systems software which was designed to control the operation of the hardware and make the configuration the computer system, the system software was different from the software used by the users for taking care of their specific requirements and which software is known as application software, that appellant's computer system was incomplete without appellant's system software and hence the system software was part of the complete system and formed integral part of the system. It was noticed that the system software was not purchased and was manufactured by the appellant. To the same effect is the decision in *Uptron India Ltd. v. Collector of Central Excise, Allahabad -1994 (73) E.L.T. 848 (Tribunal)*. The decisions do not show that systems software were supplied optionally. The nature of excisable goods and bought-out item in the present case are quite different and hence these decisions are not helpful to us. However, the following observations in *Uptron India Ltd.* relating to other bought-out items are instructive :- "...the value of such bought-out items is includible even if they are not essential for the operation of manufactured goods provided they are fitted or attached to the goods before clearance. If the parts or accessories are fitted at the option of the customer then they cannot be described as essential or integral parts of the products to which they are affixed or attached and their cost is not included in the value of the main product unless there are special provisions in the relevant tariff entry." *International Computers India Manufacture Ltd. v. Collector of Central Excise - 1994 (74) E.L.T. 636 (Tribunal)*. This decision follows the decision in *Uptron India Ltd.* and other decisions and lay down the same proposition in regard to systems software. In

State of Uttar Pradesh and Anr. v. Kores India Ltd. - AIR 1977 SC 132, Supreme Court held, in the context of a notification issued under Section 3A of UP Sales Tax Act, 1948, that Typewriter ribbon is an accessory and not a part of the typewriter, unlike spool, though it may not be possible to use the Typewriter without the ribbon. The Supreme Court approved the following observations of the High Court of Mysore in State of Mysore v. Kores (India) Ltd. "Whether a typewriter ribbon is a part of a typewriter is to be considered in the light of what is meant by a typewriter in the commercial sense. Typewriters are being sold in the market without the typewriter ribbons and therefore ribbon is not an essential part of a typewriter...." In Moti Laminates Pvt. Ltd. v. Collector of Central Excise, 1995 (76) E.L.T. 241 (SC), the Supreme Court observed :- "The obvious rationale for levying excise duty linking it with production or manufacture is that the goods so produced must be a distinct commodity known as such in common parlance or to the commercial community for purposes of buying and selling." 7. In the decision in Jyoti Ltd. v. Union of India and Anr., 1979 (4) E.L.T. (J 546), the High Court of Gujarat held that Column assembly and discharge head assembly are accessories of Power Driven Pump (Essentially Bowl assembly) because these articles do not perform the essential function of converting mechanical energy of the impeller into kinetic energy of the liquid. This is because the main function of the Pump is to shift on liquid from one point to another and the function is performed by the bowl assembly. There was evidence to show that the appellant was supplying only Bowl assembly if the column assembly and dischargehead assembly are not required by the customers to be installed. It was also emphasised that this was how the persons in the trade understand. In Kosan Metal Products Pvt. Ltd. v. Union of India and Ors. - 1981 (8) E.L.T. 725 (Bombay), it was found that trade circles recognised that valves and regulators though essential for the functioning of gas cylinders are distinct from cylinders, that many customers buy merely cylinders and do not buy valves and regulators and hence value of the latter cannot be included in the assessable value of the former. In Collector of Central Excise v. National Radio & Electronics Company Ltd. - 1993 (44) ECR 300 (Tribunal), it was held that wireless receiving set was complete without PVC strap and that several customers purchase the set without PVC strap, strap was an assembly which was not essential to the marketing of the set and hence value of strap was not to be

added to the assessable value of the sets.

In *Collector of Central Excise v. Digvijay Cement Co. Ltd.* - 1993 (67) E.L.T. 202 (Tribunal), it was held following an unreported decision relating to the same assessee, that value of rubber ring is not to be added to the assessable value of couplings cleared by the assessee along with rubber rings, though couplings have grooves inside for fitting rubber rings since the rings are not fitted at the time of clearance. In *Collector of Central Excise v. Friction Materials and Anr.* - 1996 (86) E.L.T. 685, it was held that value of the bought-out rivets supplied optionally to some of the customers who purchased brakelinings manufactured by the respondent cannot be included in the assessable value of brakelin-ing since rivet is not a part or component of brakelining though it may be necessary to use rivet or adhesive to attach brakelinings to the system or chassis. In *Eureka Forbes Ltd. v. Collector of Central Excise* - 1996 (13) RLT (Tribunal), it was held that vacuum cleaner is a complete and finished article as it leaves the factory and value of certain attachments to perform specific functions supplied to customers only on request and to be fitted at the time of actual use cannot be added to the assessable value of vacuum cleaner.

8. Electric Motor is a device which converts electrical energy into mechanical energy and attracts erstwhile T.I. 30. Erstwhile T.I. 30 reads as follows : "Power driven Pumps (including motor pumps, turbo-pumps, mono block pump sets) for liquids whether or not fitted with measuring devices." Pump is intended for moving liquid from one point to another. Part which guides liquid to the impeller, impeller which slaps the liquid and guine-vans which straighten the flow are the principal parts of pump. It is said that Bowl assembly by itself is without any accompaniment a pump and can function as such. This was how the High Court of Gujarat explained the position in *Jyoti Ltd.* case. There can be units constituting pump and Electric Motor which may be motor pump set or Monoblock pump set which are different from mere pump or power-driven pump. Erstwhile T.I. 30A artificially indicates PD pumps to include such combined units. In common parlance and commercial sense, a pump is distinct from a unit combining pump and Electric Motor. Customers may have different needs. A customer may require his pump to be operated not with the help of an Electric Motor but to be operated with the help

of Electric power generated elsewhere and supplied to him. Another customer may have an Electric Motor with him or may intend to buy an Electric Motor elsewhere and uses it to operate a newly purchased PD Pump. Yet another customer may require to buy both Electric Motor and PD Pump from the same source. There are distinct commercial and trade patterns prevailing in the market. Conversion of electric energy into mechanical energy is the function of motor and not pump. They are different entities functionally and commercially.

Electric Motor cannot be regarded as a component or integral part of a pump unless the excisable product manufactured is a unit combining both articles or is a component system which also may be known to the trade.

The fact that without electric power a pump cannot be operated (barring cases of small mechanically operated pumps) does not render the former a component or integral part of the latter, except in combined or composite system. PD Pump is complete in itself as excisable goods. It is marketed as such without electric motor. Hence, it is clear that Electric Motor is not essential even to the marketing of PD Pump, though for the sake of convenience a retail customer may buy both articles from the same shop or source. The fact that power is necessary for PD Pump to function does not make the source of power a component or integral part of pump. In this view, Electric Motor can only be regarded as a distinct article, or at best, as an accessory. On the facts, the decisions in Lawkin Pvt. Ltd., Tata Unisys Ltd. and Uptron India Ltd. cases cannot be inapplicable.

9. That there is provision in PD Pumps for fitting Electric Motor cannot have much relevance. We notice that couplings dealt with in Digvijay Cement Company Ltd. case had grooves for fitting rubber rings.

Electric Motors are not fitted to PD Pumps or Agitators at the time of clearance. Electric Motors are supplied only optionally at the request of buyers and not compulsorily to all customers. Therefore, even as accessories, the value of Electric Motors supplied in this case cannot be included in the assessable value of PD Pumps. The same is the position in relation to Agitators for the reasons which are relevant to PD Pumps and for the reason that respondent has been following invoice procedure showing the price of Electric Motors separately in cases where

motors are also sold and Department has no case that respondent was not entitled to the benefit of such procedure.

10. In this view, it is unnecessary to consider the question of limitation raised by the respondent.

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