Jay Engineering Co. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-19-1996

Reported in : (1998)(101)ELT595TriDel

Appellant : Jay Engineering Co.

Respondent : Collector of Central Excise

Judgement :

1. In this appeal filed by M/s. Jay Engg. Co., Ahmedabad, the matter relates to the classification of display cabinets under Notification No. 252/83-C.E., dated 1-10-1983 and Notification No. 42/84-C.E., dated 1-4-1984. In these exemption notifications, among others, deep freezers were exempted from part of the central excise duty otherwise leviable.

The exemption notification specifically mentions 'Deep Freezers'. The appellants had pleaded that the display cabinets manufactured by them were covered by the description 'Deep Freezers' for the purposes of exemption Notification No. 252/83-C.E. and 42/84-C.E. aforesaid. The Asstt. Collector of Central Excise, Ahmedabad, who adjudicated the matter had held that the appellants were not entitled to the concessional rate of duty available under aforesaid notifications in respect of display cabinets. This order of the Addl. Collector was confirmed by the Collector of Central Excise (Appeals), Bombay.

2. The matter was posted for hearing on 19-11-1996. The appellants have prayed for decision on merits in their absence. For the respondents/Revenue, Shri M.

Jayaraman, JDR, is present.

3. Shri M. Jayaraman, JDR, submitted that in commercial parlance deep freezers and display cabinets are two different and distinct items. The display cabinet is used in restaurants, super markets and other commercial shops where customers make their choice by seeing the items in the cabinet. The deep freezer is used for keeping vegetable goods and eatables. They have different use. As the exemption notification only mentioned deep freezers, the benefit of exemption could not be automatically extended in favour of the display cabinets.

4. We have carefully considered the matter. Under Sub-item (1) of Item No. 29A of the erstwhile Central Excise Tariff, Refrigerators and other refrigerating appliances which were ordinarily sold or offered for sale as ready assembled units were excisable, classifiable and dutiable. By way of illustration, the specific products, such as, ice makers, bottle coolers, display cabinets and water coolers were mentioned. These were only illustrative and were not exhaustive.

5. Under Notification No. 252/83-C.E., dated 1-10-1983, among others, deep freezers were exempted from so much of the duty of excise leviable thereon as was in excess of 50%. Similarly, under Notification No.42/84-C.E., dated 1-3-1984, the deep freezers were dutiable at the concessional rate of 50% adv. Both these exemption notifications refer to the product deep freezers. The exemption did not extend to display cabinets.

6. While every refrigerator may have a top freezer or bottom freezer, in commercial parlance freezer is an independent item and depending upon the requirement, there are different types of household commercial freezers. There are chest type freezers which are generally used in hotels, hostels or similar places where cold drinks, butter, etc. are stored and consumed time and again.

7. In so far as the display cases are concerned, they have been referred to separately in the publication "Refrigeration and Air Conditioning" by Manohar Prasad at page 458. In the display cases, the cooling is effected by providing coils with fins or without fins mounted at top and bottom usually full length of the casing. The base coil is often kept at bottom of the case. Food is kept directly over the coil

to have efficient cooling. The display doors are usually tripple glass with absorbent material around the bases in order to prevent from visual obstruction due to condensation over the glass panes. Doors are provided either sliding or swing open type - depending upon the use.

8. It is thus seen that 'deep freezer' and 'display cabinet' are two commodities known in the commercial world differently. The exemption notification refers to the deep freezers only. The exemption notifications had to be construed strictly. It is not possible while interpreting the expression 'deep freezer' to expand the area of exemption to display cabinets.

9. The Collector of Central Excise (Appeals) had referred that the appellants had filed classification list, where they have shown deep freezers and display cabinets separately. He had referred to the discussion by the adjudicating authority and had confirmed the view taken by him. On consideration of the matter, we find no infirmity in the view taken by the adjudicating authority and the appellate authority. As a result, we do not find any merit in this appeal and the same is rejected.