

**Ravi Dughdhalaya Vs. Collector of Customs and Central**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jan-25-1984

**Reported in :** (1984)(17)ELT125TriDel

**Appellant :** Ravi Dughdhalaya

**Respondent :** Collector of Customs and Central

**Judgement :**

1. M/s. Ravi Dughdhalaya have filed Revision Application dated 10-8-77 against order-in-appeal No. 599/77 dated 1-7-77 passed by the Appellate Collector of Customs and Central Excise, Bombay.

2. The appellant is a small milk vendor. He purchased a second hand air-compressor and copper tubes from the local market, had the copper tubes soldered together in a zigzag way and connected the wooden box with the compressor by means of these tubes. The wooden box was prepared locally and was called cabinet. The Central Excise officers seized the wooden box and the copper coils on the ground that they were dutiable as parts of refrigerating machinery. In the show-cause notice dated 27-8-76 it was alleged that the appellants had got manufactured the wooden cabinet and the cooling coils without obtaining the Central Excise licence and used them after assembling the milk cooler which is a refrigeration appliance falling under T.I. 29A(i). The Dy. Collector of Central Excise, Ahmedabad held that the appellants were engaged in the manufacture of cabinet for the milk cooler and the cooling coils and using the same in assembly a milk cooler in their shop. The Deputy Collector has further

stated that the wooden cabinet, irrespective of the fact that it is manufactured from wood or other things, is made or meant for performance as a part of refrigeration machinery or appliance and accordingly attracts Central Excise duty under sub-item (iv) of item 29A of CET. Such cabinets are not exempt from payment of duty under Notification No. 80/62 dated 24-4-62. He held that the cabinet being made from wood and used in the assembly of the milk cooler from old machinery amounted to manufacture of excisable goods. He, therefore, confiscated the cabinet and the cooling coil and imposed a fine in lieu of confiscation of Rs. 50/-. He also imposed a personal penalty of Rs. 50/- on the appellants and also demanded the Central Excise duty at appropriate rate on the cabinet and cooling coil valued at Rs. 8500/-. The Appellate Collectors of Customs upheld the order of the Deputy Collector and rejected the appeal. He, inter-alia, observed that the appellants had got manufactured cooling coils from another party to which necessary charges had been paid. Accordingly, he held that the cooling coil in question was a saleable item. Besides, the cabinet and the cooling coil were fitted to the milk cooler and it was, therefore, evident that they are parts and are falling under item 29A of CET. As such duty was leviable on these parts. The Appellate Collector, however, reduced the penalty of Rs. 50/- to Rs. 10/- since the cabinet was meant for personal use and not for sale. In their appeal the appellants have stated that the cooling coils used by the appellants are not the type which are generally manufactured for sale or as a saleable article. What they did was that they merely arranged copper tubes purchased in local market in a zigzag horizontal way to connect the cabinet with the compressor according to their requirements. Since these were made and soldered at site, similarly the wooden cabinet cannot be considered as a cabinet or a part of air conditioning machinery under item 29A(iii) of the Tariff. It is not a cabinet for using the air conditioning or refrigeration machinery but a storage tank which is usually provided in the milk chilling centres.

These storage tanks are never held to be excisable requiring the units to take out a licence for their manufacture nor are they charged to duty. The appellants have cited the following cases in support of their appeal: (1) *Vadilal Ice & Cold Storage v. Union of India & others* (Gujarat High Court) wherein it was held that simply because pipes of a particular size have been arranged in a particular manner so as to carry cooling gas, it cannot be said that they could form a condenser or a

brine cooler. Such products are not saleable as condenser cooling coil or brine cooler nor are such understood to be so by the people in the trade or commercial world. Therefore, such parts are not liable to duty under item 29A(3) of the Tariff.

(2) *Mother India Refrigeration Industries Pvt. Ltd. v. Supdt. of Central Excise* (Allahabad High Court) reported in 1980 E.L.T. page 600. Here the High Court of Allahabad held that the central idea underlying entry 29A is that dutiable article must be an assembled unit which is ordinarily sold or offered for sale, If a person erects a unit with his own ingenuity, it is not liable to duty.

Similarly, component parts erected at the site are equally outside the purview of item 29A as they are not assembled units. This entry covers only parts of the refrigeration or air-conditioning appliances which are liable to duty. In other words, such parts should be such as are ordinarily sold or offered for sale as ready assembled units.

3. The Departmental representative Shri Khanna submitted that he was not in a position to offer any comments on the judgment of the Allahabad High Court cited by the appellants. In his opinion, the sub-item (3) of item 29A of the Tariff should be read independently and all parts of refrigeration and air-conditioning appliance and machinery, whether they are assembled at site or they are ready for assembly or not, attract Central Excise duty. Saleability of such parts is not the criterion.

4. The Bench considered the submission made by both parties. The Bench is of the view that the facts of the case are fully covered by the citations referred to above. In particular, the judgment of the Allahabad High Court in the matter of *Mother India Refrigeration Industries Pvt. Ltd. v. Supdt. of Central Excise* is clear and following this judgment we hold that the make-shift contrivance for milk cooling made by the appellants could not be considered excisable under entry No. 29A(3). We, therefore, set aside the order of the Appellate Collector and allow the appeal.

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