

Commissioner of C. Ex. Vs. Climate Control Services Ltd.

Commissioner of C. Ex. Vs. Climate Control Services Ltd.

SooperKanoon Citation : sooperkanoon.com/16225

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-13-1999

Reported in : (1999)(113)ELT661TriDel

Appellant : Commissioner of C. Ex.

Respondent : Climate Control Services Ltd.

Judgement :

1. The Revenue filed this appeal against the Order-in-Original dated 11-7-1991 passed by the Collector of Central Excise, Hyderabad. In the impugned order the Collector of Central Excise held that the disinfectors manufactured by the respondents are classifiable under Sub-heading 9018.00 of the Central Excise Tariff and are entitled for the benefit of Notification No. 339/86-C.E., dated 11-6-1986.
2. When the case was called none appeared on behalf of the respondents in spite of the notice. From the record we find that the respondents had filed cross-objection. In this case a show cause notice was issued on 30th August, 1990. Therefore, being an old matter is being taken for disposal in the absence of the respondents.
3. Learned JDR appearing on behalf of the Revenue submits that the respondents are manufacturing disinfectors and marketing as "Oticare Aerosol Disinfectant". He submits that Shri S. Dhaliwal, representative of the respondents gave a detailed description of this product and according to the description its main function is to

sterilise a required area. He submits that the Tariff Heading 9018.00 of the Central Excise Tariff covered the instruments and appliances used in medical, surgical, dental or veterinary sciences. Therefore, this product cannot be classified under this tariff heading. He, further submits that the Tariff Entry 84.79 includes Machines and mechanical appliances having individual functions, not specified or included elsewhere. He submits that disinfectant cannot be held as a humidifier.

He, further submits that Notification No. 339/86-C.E., dated 11-6-1986 provides exemption to the humidifier only. He, further submits that the notification also grants exemption to the life saving equipments which are certified by the Director General Health Services, New Delhi to be 'Life Saving Equipment'. The contention of the learned JDR is that no such certificate is produced by the respondents regarding the product in question.

4. In respect of limitation, he submits that the Collector of Central Excise in the impugned order held that there is no suppression or misdeclaration of facts on the part of the respondents. He submits that the respondents were clearing disinfectant under the guise of humidifier. Therefore, the respondents suppressed this fact hence the extended period is applicable in the present case. He, therefore, prays that the appeal be allowed.

6. In this case the issue is in respect of classification of disinfectant and the benefit of Notification No. 339/86-C.E., dated 11-6-1986 in respect of disinfectant and the applicability of extended period of limitation. First we deal with the classification of product.

The representative of the respondents Shri S. Dhaliwal describes the product in question as under :- "This product consists of a motor, suitable housing and rotating disc atomiser with integral pump, aerosol carrier fan, a bowl in a suitable housing made of aluminium or stainless steel. 'Oticare aerosol disinfectant' is a compact, portable equipment used to convert liquid formalin into its true aerosol particles. The product is basically meant for atomising water and any other solvent based liquids such as, Kerosene, Finit, Formalin, Perfume, Dettol or any other liquid. Its main function is sterilisation and fumigation of a required area. The apparatus is used in operation theatres, intensive care units, wards in hospitals,

nursing homes, hatcheries, sericulture units, pharmaceutical laboratories, etc. According to the Director, Institute of Preventive Medicine, this machine is highly suitable for chemical disinfection of the room and it is highly useful and ideally suited wherever fumigation of humidification is required. The company has been advertising the product in leading newspapers as an effective disinfectant. The company's literature, quotations, invoices, described the product as a disinfectant." On the above description it is clear that disinfectant in the general purpose machine which can be used at various places including hospitals, hatcheries, sericulture units and pharmaceutical laboratories. The Tariff Heading 9018.00 of the Central Excise Tariff includes instruments and appliances used in medical, surgical, dental or veterinary sciences. The disinfectant produced by the respondents can also be used for sericulture units which is beyond the scope of Sub-heading 9018.00 of GET.7. The Sub-heading 84.79 of Central Excise Tariff includes machines and mechanical appliances having individual functions, not specified or included elsewhere in the chapter. As disinfectant has multifarious function and not humidifier as admitted by the respondents. Hence it is more appropriately classifiable under Sub-heading 84.79 of the CET.8. The Notification No. 339/86-C.E., date 11-6-1986 provides exemption to humidifier. In the foregoing paras as we held that the product in question is not a humidifier nor the respondents produced any certificate from the authorities to show that it is a life saving equipment. Therefore, the benefit of notification is not available to the product in question.

9. In respect of the limitation the contention of the Revenue is that they were clearing the disinfectant under guise of humidifier and this fact was not disclosed to the Revenue. We find that respondents vide letter dated 12-4-1986 disclosed the fact that they are going to manufacture disinfectant and they requested to the Superintendent of Central Excise to advise them in respect of classification of the goods. Further, the respondents in their respective declaration also mentioned the fact regarding the product of disinfectant. In these circumstances, we uphold the finding of the learned Collector of Central Excise that there is no suppression or misdeclaration of facts on the part of the respondents and the provision of proviso to Section 11(A)(1) of the Act is not attracted.