Collector of C. Ex. Vs. North West Switch Gear Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-20-2000

Reported in : (2000)(119)ELT646TriDel

Appellant : Collector of C. Ex.

Respondent : North West Switch Gear Ltd.

Judgement :

1. These two appeals - one filed by M/s. North West Switch Gear Ltd. and other by the Revenue - involve common issue regarding classification of Regulator of Electrical Fans whether under sub-heading 8414.20 or 8414.99 of the Schedule to the Central Excise Tariff Act.

2. Shri R. Santhanam, along with Shri R.C. Gupta, learned Advocates, submitted that the period involved for the demand in both the appeals pertains to from May, 1993 to February, 1994; that during this relevant period Central Board of Excise & Customs has clarified vide letter F.No. 150/4/87 CEX-4, dated 24-6-1987 that the Fan Regulators would be classifiable under 8414.20 along with Fans. He further submitted that Hon'ble Supreme Court in the case of Ranadey Micro Nutrients v. CCE, 1996 (87) E.L.T. 19 (S.C.) and Paper Products Ltd. v. CCE, 1999 (112) E.L.T. 765 (S.C.) has held that the department cannot argue against the classification given in the circular and the classification given at the relevant time of demand is to be followed by the Revenue. He, therefore, contended that the department cannot now claim that the Fan Regulators are classifiable under sub-heading 8414.99. He finally mentioned that during the relevant period the

classification lists were approved by the Department and the show cause notices were issued for demanding the differential duty and in the light of the judgment of the Supreme Court in the case of CCE, Baroda v. Cotspun, 1999 (113) E.L.T.353 (S.C.) there cannot be any short levy if the clearances had been effected on the basis of approved classification list.

3. Countering the arguments Dr. R. Babu, learned D. R., submitted that the Board's letter dated 24-6-1987 was issued as there was dispute about the classification of Fan Regulators, where under Chapter 84 or 85 as Electrical Resistors. He submitted that following the HSN Explanatory Note which provides that accessories, instruments and apparatus with which they normally belong are classified with that machine or apparatus, the Board clarified that the classification of Fan Regulator under sub-heading 8414.20 along with fan would seem to be more appropriate. He further mentioned that it was not for consideration of the Board, whether the Regulator will go under 8414.20 or 8414.99 and as such this point was not discussed and clarified by the Board in the said letter.

4. We have considered the submissions of both sides. As mentioned above the H.S.N. Explanatory Notes clearly provide that accessories presented with the machine or apparatus with which they normally belong are classifiable with the machine or apparatus. On the basis of this Explanatory Note, the Board clarified that Fan Regulator will not be classifiable under Chapter 85 as electrical resistor and their classification under sub-heading 8414.20 along with fan would be appropriate. The issue before the Board was not that when Regulator was cleared as such without fans, would be classifiable under subheading 8414.99 or even then they would be classifiable under 8414.20.

Accordingly, we are of the view that the decision in the classification list cannot be made on the basis of Board's circular. We find that there is a separate subheading of parts and accessories in heading 8414. Sub-heading 8414.91 covers parts of goods covered by sub-heading 8414.10 and 8414.99 covers parts and accessories of others. It is thus clear that parts and accessories of electrical fan will be classifiable under this sub-heading. We, therefore, hold that Fan Regulator manufactured by the assessee are classifiable under sub-heading 8414.99 as accessories of fans. We, however, agree with the learned Advocate that differential duty cannot be demanded as the classification list claiming classification under sub-heading 8414.20 had been approved by the department, in the light of the Supreme Court's decision in the case of Cotspun, supra. Accordingly, demands are not sustainable.