Eureka Forbes Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-14-2000

Reported in : (2000)(92)LC349Tri(Mum.)bai

Judge : S T Gowri, J Srinivasamurthy

Appellant : Eureka Forbes Ltd.

Respondent : Cce

Judgement :
1. M/s. Eureka Forbes, the appellant before us, markets a product known as "Aquaguard". The product consists of two components. The first component consists of what is described as water filter purifier. It comprises of a chamber containing particles of activated carbon; another chamber housing an ultraviolet lamp and a third chamber which contains electronic controls and a spout for releasing water. The water is first passed through the chamber containing the carbon where it is filtered to remove solid waste to deodorise it and to remove unwanted colours. It is then taken to the chamber containing ultraviolet lamp radiation and the lamp destroys microscopic bacteria and viruses present. The water is then ready for removal.

2. This unit is manufactured at Hyderabad and in Uttar Pradesh by the wholly owned subsidiary of the appellant M/s. AP Industrial Company Ltd. (APIC for short). APIC sends the unit to the appellant's warehouse. The appellant thereafter packs this article and second component that is referred as a "pre filter" in one

carton. This pre filter, which is purchased from the market, consists of a bowl housing a polypropylene filter candle. It is not in dispute that the sales of this product are predominantly with the pre filter, and that it is not advertised that the purchase of the filter is optional, although it was contended that some small proportion of the sale (less than about 2%) is without pre filter. The stated object of the pre filter is to remove the coarser particles contained in the water to be purified before it enters the chamber containing the activated carbon. It was claimed that this is done so as to increase the life of the activated carbon which would otherwise be spent and need replacement in far shorter time.

3. In the order impugned in the appeal, the Commissioner has held that the activity of the appellant in putting these two articles together in a carton amounts to manufacture. The Commissioner, in his order, repeats what the notice to show cause says. This is that the final product sold to the customer consists of a water purifier, (which is obtained from APIC) and that by adding the pre filter, the appellant changes it from water purifier to water filtration and purification apparatus, and that therefore a commercially distinct product comes into existence. Note 6 to Section XVI is relied upon to say that the activity undertaken by the appellant amounts to completion of unfinished article being rendered complete or finished article and hence deemed to be manufacture.

4. The contention raised by the advocate for the appellant is that the activity undertaken by the appellant does not amount to manufacture and that therefore the provisions of Note 6 are not attracted. He says that the product which is received by the appellant from APIC itself consists of filtration and purification units and is therefore perfectly capable of performing its final function of both filtration and purification without the addition of a pre filter. The object of the pre filter is only to ensure that partially filtered water is received by the other unit so that activated carbon which acts as a filtering element in the main unit can be used longer. Without the pre filter, having regard to the quality of water in most Indian towns and cities, the activated carbon is required to be replaced in one to four months; the use of pre filter ensures activated carbon's usage without replacement for between 6 and 8 months. He cites from the brochure of the product, recommending periodical back flushing of the pre filter in order to remove

particulate matter in it, in support of this contention. The project report dated 28.9.1996 of the University of Agricultural and Science of Bangalore on an evaluation of this appliance is cited in support. This report says that the turbidity of the water is 7NTU (a measure of turbidity, we were told) when obtained from the Aquaguard to which pre filter is not connected, whereas it is 6 NTU where it is so connected. A report dated 28.11.1996 of the Central Food Technological Research Institute, Mysore to show NTU of 8.9 of water treated without pre filter and 8.3 NTU is with pre filter is also cited. The contention is that the pre filter only operates to some extent to reduce the turbidity of water and the appliance is perfectly capable of being used without pre filter.

5. The departmental representative mainly adopts the reasonings of the Commissioner. He also cites the judgment of the Supreme Court in AP Industrial Components v. CCE 2000 (36) RLT 368 : 2000 (88) ECR 763 (SC) and the judgment of the Supreme Court in Jay Engineering Ltd. v. Union of India 1989 (39) ELT 168. The fact is uncontroverted that, except for a tiny fraction, sales made by the appellant, include the pre filter.

There is also no element of optionality. The customer is not at any time told that the pre filter is not really essential for the operation of the equipment and he does not have an option to buy it without pre filter or later by it. This fact was not disputed. The unit advertised and offered for sale and sold to the customers at large is one i.e.

having both the pre filter and the other unit. Therefore, what is sold by the appellant has as an essential component the pre filter. It is also not disputed that the pre filter is connected to the other units by means of clamps and tube, clamps to hold it and tube to coming water from the pre filter to the other unit as well as to carry out the through pre filter from its source. This put together comprises Aquaguard ST 2000 as it sold or known.

6. The question is whether the activity undertaken by the appellant amounts to manufacture; that is to say, whether by applying the test laid down by the Supreme Court and other courts which has evolved over the period of years and is now universally accepted the activity of the appellant so changes the nature of the

goods which the appellant receives that a new product having commercially distinct name, character and use emerges. The brochure of the appellant, and the technical reports of the two authorities that we have referred to in paragraph above indicate that the function of the pre filter is to enhance or support the filtering function of the main unit. These reports show that the turbidity of the water is reduced to some extent when the pre filter is employed. They also show that the difference in turbidity of the resultant water with the pre filter is employed and when it is not employed is not so significant, having regard to the total turbidity present as to conclude that, without the use of the pre filter the turbidity is not reduced to any appreciable extent by the other unit. The difference amounts to 15%, going by the report of the University of Agricultural Sciences, Bangalore and 10% going by the report of Central Food Technological Research Institute, Mysore. The conclusion, thus is that the utility of the pre filter to the function of the unit as a whole cannot be anything other than marginal. Pre filter in any case cannot be described as being crucial to the functioning of the other unit. In other words, in the manner in which the unit manufactured by APIC is itself capable of performing the function of both filtration and purification although its efficiency in performing the function of purification may perhaps be increased by use of the pre filter.

7. In these circumstances, the provisions of Note 6 to Section XVI will not apply. That Note would apply in a situation where an incomplete or unfinished product is converted into a finished or complete product by a particular activity which would then be manufacture. As we have concluded, the Aquaguard itself is not incomplete, for the purpose of classification, in the manner in which it is received from APIC. This appliance so received is classifiable under heading 8421.10 of the tariff. So, as a matter of fact, is the pre filter received by the appellant.

8. For the purpose of classification in the tariff, therefore, the activity undertaken by the appellant does not amount to manufacture.

This is the sole basis that the notice and the order of the Commissioner have proceeded upon, that by the addition of the pre filter, the nature of function of the unit is drastically revised and, that therefore it has assumed the characteristic of a new, commercially distinct article. As we have noted, they say that the commodity which earlier carried out the function of water purifier has changed into a commodity which is a water filtration and purification apparatus. For this charge to sustain, it will have to be shown that claim that it acts as a filter is wrong, and that the activated carbon performs some function other than filtration. There is no such charge in the notice.

On the basis upon which the notice proceeds therefore, it has to be held that there is no manufacture.AP Industrial Component Ltd. v. CCE, Hyderabad 2000 (36) RLT 368 : 2000 (88) ECR 763 (SC) does not come to the department's help. The question before that Court was whether the benefit of a notification exempting filtering apparatus of a specified capacity from duty would be available to the Aquaguard cleared by AP Industrial Component Ltd. The Court confirmed the view of the Tribunal that the benefit of the notification would not be available to these goods for the reason that they both filtered and purified water. If at all, this judgment would show that the Tribunal had noted that Aquaguard cleared by AP Industrial Corporation (which as we have seen did not incorporate the pre filter) carried out both filtration and purification otherwise than by filtration. This in fact runs directly counter to the Commissioner's view that the nature of the appliance is changed by use of the pre filter to a filtration and purification apparatus, and this supports the appellant's case.Jay Engineering v. Union of India supports the department's case. The view of the Court was that since the affixation of the name plates to electric fans confers upon them the marketability which, they did not otherwise possess, the act constitutes manufacture. In this case, apart from the fact that a small proportion of the Aquaguard is sold to the user without the pre filter, the Aquaguard manufactured by APIC is sold to the appellant. The addition of the pre filter hence does not confer on it a marketability that it did not earlier possess.

11. In the light of this finding, we have not considered it necessary to record our submissions on the arguments which were addressed on the availability to the department of the extended period of limitation (cited in the notice) contained (in) the proviso under Section 11A(1) of the Act.