

Eddy Current Control (India) Ltd Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-02-2000

Reported in : (2000)(70)ECC246

Judge : J Balasundram, A T V.K.

Appellant : Eddy Current Control (India) Ltd

Respondent : Cce

Judgement :

1. The issue involved in this appeal filed by M/s. Eddy Current Control (India) Ltd. is whether Variable Speed Motors known as dynodrives are classifiable under Tariff Item No. 68 of the erstwhile Central Excise Tariff as claimed by the appellants or under Tariff Item No. 30 as Electric Motor as confirmed by the Collector (Appeals) under the impugned order.

2. Shri Sanjeev Sen, learned Advocate submitted that the appellant was promoted with the object of manufacturing what are known as Eddy Current Clutches or dynodrive in technical collaboration with a Japanese firm; that their product is used in a variety of industries essentially as variable speed drive and the purpose of impugned product is to convert a constant speed mechanical input into a variable speed mechanical output with constant torque; that accordingly the product has to be used alongwith a source of motive mechanical power or prime mover; that such prime mover could be electric motor or appliances capable of giving rotating mechanical energy to the clutch; that besides supplying clutches as such they had also supplied clutches with suitable electric motor attached thereto to supply the motive power; that they had purchased duty paid electrical motors and attached them to the clutch units for supply to the customers; that such an attachment was effective by nuts and bolts. The learned Advocate further submitted that on a reference made by them regarding dutiability of their product, Collector, Central Excise under letter dated 21.11.74 informed them that the dynodrive would not fall under existing item of Central Excise Tariff and was non-dutiable provided the electric motor which form parts of it was duty paid. He also mentioned that after introduction of Item 68 by the Finance Act, 1975 they classified the impugned product under Tariff Item 68 which was duly approved by the department and such classification continued upto 1981-82; that for the period in dispute i.e. from July 1981 to November 1983 several show cause notices were issued to re-classify the impugned product under Tariff Item 30 on the ground that the dynodrive with electric motor attached would itself merit classification as an electric motor and their assessments were made provisional; that as these show cause notices were quashed by the Kerala High Court in Writ Appeal No. 131/1989 with the direction to issue fresh show cause notice and to finalise the assessment; that a show cause notice dated 15.9.92 was issued and both the lower authorities have classified dynodrive attached with electric motor under Tariff Item 30.

3. The learned Advocate further submitted that they had furnished 4 affidavits in support of their contention that dynodrive is not identified by the people conversant with the product as electric motor; that the Collector (Appeals) having categorically found that the details furnished by them through various affidavits are only to be accepted, is wrong in holding that the product in question is a variable speed electric motor. He

emphasised that predominant use of the dynodrive is also as a variable speed clutch and the electric motor is only a general accessory thereto which could not effect classification, that the electric motor is merely source of mechanical power which could equally be supplied by any other prime mover. Finally he submitted that the product cannot be again classified as electric motor under Tariff Item 30 when in fact the bought out electric motors had already been charged to excise duty as electric motor; that merely changing fixed speed into variable speed will not make into a new electric motor chargeable to duty under the same item second time; that the reliance placed by the Collector (Appeals) on the decision in the case of Laminating Packages v. CCE is misplaced.

4. Countering the arguments Shri M.P. Singh, learned, DR submitted that it is an admitted fact that the appellants were removing the product as dynodrive from the factory i.e. complete motor with clutch; that this is apparent from the affidavit submitted by the appellants. He referred to technical literature, according to which dynodrive variable speed drive are adjustable speed drive package in common from combining TEFC, Flanged mounted. Three Phase Induction motor and a self-ventilated Eddy Current clutch of a compatible rating, housed in a guarded enclosure.

He further mentioned that it is not case of the appellants that they were selling clutches with dynodrive; that this is evident from the decision in their own case Eddy Current Control (India) Ltd. v. CCE, Cochin in which it was mentioned that the assessee manufacture Eddy Current clutches which are machinery components and are used to control the speed of electric motors and the nature of the components are such that its customers would be manufacturers of electric motors only. Learned DR also referred to the decision in the case of Usha Martin Industries Ltd. v. CCE the appellants claimed that dynodrive is nothing but electric motor.

Reliance was also placed on the decision in the case of CCE, Coimbatore v. Dyna Spede Integrated System Pvt. Ltd. . Learned DR further mentioned that electric motor purchased by the appellants are changed into a dynodrive which has its own specification and is not same as electric motor; that electric motor cannot be used where variable speed is required to be used and as such a new commodity with new name correction and use comes into existence and is as such chargeable to Central Excise duty. In support of his contention he relied upon the decision in the case of Union of India v. J.G. Class Industries Ltd. wherein two-fold tests were laid down for testing whether the process was that of manufacture. The first test is whether by the said process the different commercial commodity comes into existence and second test is whether the commodity which was already in existence will serve no purpose but for the said process. He also relied upon the decision in the case of Laminated Packages (supra). Finally he submitted that Item No. 30 of the old Central Excise Tariff cover Multispeed motor which is a different product from Monospeed motor and contended that by the process undertaken by the appellants the Monospeed motor gets converted into Multispeed motor which amounts to manufacture; that electric motor after becoming Multispeed motor continues to fall in Item No. 30 does not prohibit the department from collecting the duty second time. He relied upon the decision of the Supreme Court in the case of TVLK. A.K. Anwar & Co. v.State of Tamil Nadu .

5. We have considered the submissions of both the sides. It is the case of the appellants that they manufacture Eddy Current clutches which act as variable speed drive. According to them the clutches were sold by them as such for use by the purchaser with any suitable prime mover whereas in some cases their customers had requested to supply the clutches with suitable electric motor attached thereto. In the present appeal classification of such clutches attached with electric motor is in dispute. According to the department such a product is classifiable under old tariff Item No. 30 as electric motor as the product in question functions as a variable speed drive and Item 30 applies to electric motors, all sorts. The department has based its case on the fact that according to the technical literature the range of standard air cooled dynodrive variable motors covers all standard rating from 0.4 to 75 kW. Ratings from 75 kW and upto 300 kW are available in water cooled construction. Dynodrive consists of Eddy Current coupling which provide adjustable speed and 3 phase squirrel cage induction motor rotating the input side of the coupling at constant speed. The Assistant Collector also gave his finding that as the predominant use of the item is adjustable variable speed motor and dynodrive is not clutch alone it has to be classified under Item 30 and not under Item 68. No

doubt the Asst. Collector is right in giving his finding that what is being cleared in the present matter is not only clutch but dynodrive consisting of electric motor and a coupling. The clutch by itself is classifiable under tariff item 68. This view is strengthened by the decision in the case of Dyno Spede Integrated System (P) Ltd. (supra) wherein it was held that Teco-generator assembly, excitation coil and Eddy Current clutch are not parts of electric motor and are classifiable under Item 68. The learned DR has relied upon this decision to indicate that when these items are cleared alongwith induction motors they will be classifiable under Item 30 and not Item 68. The appellants have placed heavy reliance on the affidavit of one Shri S. Madhusudhan, their Work Manager, affidavit of Dr. M.S.Narayanan Potty, retired Professor and Head of the Deptt. of the Department of Electrical Engineering in Govt. Engg. College, Trichur, affidavit of Shri N. Parmeswara Iyer, Chartered Engineer and affidavit of Shri J. Jayaraj, Maintenance Manager of M/s. Eternit Everest Ltd. According to these affidavits Eddy Current clutch is known as clutch, primary function of which is to provide the variable speed and no person would identify the same or treat it as an electric motor; that Eddy Current clutch does not convert electrical power to mechanical power.

6. All these affidavits are only referring to the clutch alone and not to the product in question where clutch has been attached to the electric motor. As observed earlier clutch by itself is classifiable under Item 68 and apparently no dispute has been raised by the department about the classification of the clutch separately. It is the classification of the product i.e. electric motor attached to clutch which is in dispute in this matter. Certainly the function of this product is similar to the function of electric motor and it cannot be classified as other than electric motors. However, we find sufficient force in the submissions of the Appellants that merely attaching Eddy Current clutch to the electric motor purchased from the market it cannot be said that a new commodity commercially known as a distinct and a separate commodity having its own character, use and name has come into existence. Only the change by attaching clutch is that electric motor becomes a variable speed motor but its function continues to be as electric motor only. Even applying twin test laid down by the Supreme Court in the J.G. Glass case, it cannot be said that a different commercial commodity has come into existence so as to warrant levy of duty second time. The use of electric motor even after giving it a character of variable speed remains the same. We, accordingly hold that the Eddy Current Clutch cleared alongwith electric motor will not be classifiable under Item 68, but will be treated as electric motor on which no further duty will be chargeable as electric motor has already suffered duty. We make it clear that if any duty of excise is payable on clutch as such individually, the same will not be affected by this order.

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