

Commissioner of Central Excise Vs. Fluid therm Technology P. Ltd. and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Sep-05-2002

Reported in : (2003)(85)ECC279

Judge : S Peeran, R K Jeet

Appellant : Commissioner of Central Excise

Respondent : Fluid therm Technology P. Ltd. and

Judgement :

1. In all these 3 appeals common question of law and fact arises and hence they are taken up together for disposal as per law.

2. The question that arises for consideration is about the classification of 'control panels' when cleared alongwith 'industrial furnace'. The Commissioner (Appeals) in the impugned order has noted that the assessee are manufacturers of 'Industrial furnace' and its parts and were clearing the same from their factory under chapter Heading 8514.00 attracting duty at 10% adv. They were also manufacturing 'control panels' falling under chapter Heading 8537.00 of CET attracting duty at 20% adv. in their case the assessee contended that they were clearing the industrial furnace from their factory under chapter Heading 8514.00 attracting duty at 10% adv. in which the control panel is a part of the system. They contended that the control panels cannot be separately classified under 8537 as it was being used as a part and was interconnected to the furnace by means of pipes/cables, hoses. They do not perform one definite function but perform 2 different functions. In other

words, it was contended that the furnace acts as heating mechanism whereas the control panel acts as a mechanism for regulating/supplying the flow of electricity. It was also contended that the provisions of Notification No. 83/92-CE dated 16.9.92 would also be not applicable to control panel inasmuch as the same is not used within the factory of production for manufacture of final product. However, the original authority had classified the control panels under 8537.00. The Commissioner (Appeals) after due consideration of all the material records including the HSN Notes at page 1132 upheld their contention and directed that control panels are required to be classified along with Industrial furnace under chapter 8514.00 The Revenue is aggrieved with this order and hence these appeals.

3. We have heard Ld. DR Shri A. Jayachandran who reiterated the grounds of the appeal.

4. On the other hand, Ld. Consultant Shri R. Parthasarathy and Shri R.Raghavan, Adv. submitted that the issue is no longer res Integra and the matter has been decided by the Tribunal in the following cases:CCE v. Mumeric Electronics Pvt. Ltd., 2001 (138) ELT 1202 wherein it has been held that batteries supplied alongwith UPS system are required to be classifiable as component of UPS systems and not in its separate heading.

(ii) Kumar Traders v. CCE, Calcutta, 2001 (129) ELT 741 wherein also it was held that fan regulators cleared separately and not in combination with fans are classifiable under sub-heading 9414.99 of CET and not under sub-heading 8414.20.Orient General Industries Ltd. v. CCE, New Delhi, 1994 (70) ELT 764 wherein it was held that regulators when sold alongwith electric fans as an integral part thereof then it is assessable at the same rate as electric fan and not to be classified separately even if there is a separate heading. This judgment of the Tribunal has been upheld by the Apex Court as can be seen from the gist appearing in 7996 (86) ELT A220.

(iv) CCE v. Kiran Electricals, 1999 (112) ELT 1046 wherein also parts of aerials and antenna when they are separately used as conductors to conduct the signals from the antenna or aerials to television sets they would be classified as wires and

cables under heading 85.44 and if they are used as television sets antenna wire and aerials were classifiable as 85,29.

5. On a careful consideration of the submission we notice that the Commissioner (Appeals) in the impugned order has noticed the function of control panels, which have been designed specifically and are dedicated to the furnace in order to make it a single unit and that the furnace cannot be put to effective use without the particular control panel meant for it. He has noticed that the furnace and control panels are always presented together for assessment. He has applied the provisions of Note 4 to Section XVI Note (2) (b) to Section XVI, and also explanatory note at Page 1132 and has held that control panels are designed specifically and dedicated to the furnace and requires to be classified alongwith integral furnace. We notice that the ratio of the citations referred to also lays down the same ruling that when a part is utilised alongwith main equipment and cleared alongwith it then it has to be classified alongwith the main equipment. In view of the findings given by the Commissioner (Appeals) which are legal and proper and in terms of the citations given above we do not find any merit in all these 3 appeals filed by Revenue and hence all the 3 appeals are rejected.

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