

Commissioner of Central Excise Vs. Welmech Engineering (P) Ltd.

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

Decided On : Oct-10-2002

Reported in : (2003)(85)ECC394

Judge : S Peeran, R K Jeet

Appellant : Commissioner of Central Excise

Respondent : Welmech Engineering (P) Ltd.

Judgement :

1. In both these Revenue appeals common question of law and facts are involved. Hence, they are taken up together for disposal as per law.
2. The question that arises for consideration in these appeals is as to whether "Control Panels" are classifiable under the Chapter Heading 85.37 or 85.14 of the Central Excise Tariff Act when cleared along with the "Industrial Furnace" from the factory. Ld. Commissioner (Appeals) has accepted the assessee's plea that the "Control Panels" are designed specifically for the furnace in order to make it a single unit and that the furnace cannot be put to effective use without the particular control panels meant for it. He has also upheld the contention that the furnaces and control panels are always presented together for assessment. He has taken into consideration the provisions of note 4 to Section XVI, Note (2) (b) to Section XVI and also the explanatory note appearing in the HSN at page 1132. He has also taken into consideration the Tribunal ruling rendered in the case of Jeevan Diesels v. CCE, 1993 (68) ELT 797 (T). He has noted that the provisions of

Notification No.83/92-CE dt. 16.9.92 is applicable in this case as the Control Panels are used within the factory of production for manufacturing final product namely Furnace. He has also noted that the Control Panel is Intended to contribute together to a clearly defined function covered by one of the Chapter Heading 84 or 85 and is interconnected with the Furnace by means of pipes, cables, hoses to perform one defined function. Revenue is aggrieved with this appealed and have taken up several grounds to contest the matter.

3. We heard Shri G. Sree Kumar Menon, Ld. SDR for the Revenue and Shri S.S. Radhakrishnan, Ld. Counsel for the Respondents. It has been brought to our notice that this Bench in another Revenue matter of identical issue upheld the Commissioner (Appeals)'s finding In the case of CCE, Chennai-II v. Fluid Therm Technology P Ltd, vide Final Order No. 993-995/2002 dt. 5.9.2002, in view of the issue pertaining to the "Control Panels" cleared alongwith the "Industrial Furnace". The Commissioner (Appeals) had decided the case In the assessee's favour and had upheld the classification under the Chapter Heading 8514 of the CETA and attracting 10% advalorem. The Tribunal after due examination upheld the Commissioner (Appeals) order and the issue has been finally decided.

4. Therefore, taking into consideration the submissions made by both sides and after perusing the records we confirm the impugned order and dismiss the Revenue appeals. We note herein paras 3 to 5 of final order No.993-995/02 dt. 5.9.2002.

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

4. On the other hand, Ld, Consultant Shri R. Parthasarthy 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 1996 (86) ELT A 220.

(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 along with 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." 5. Respectfully following the above judgments of the Tribunal we confirm the impugned order in both the appeals. Revenue appeals are dismissed.