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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-09-2003

Judge : S T Gowri, G Srinivasan

Appellant : Voltas Ltd.

Respondent : Commissioner of Central

Judgement :

1. The appellant at the relevant time was engaged in the manufacture of water coolers and refrigerators. It, after taking permission from the proper officer, sent out in terms of Rule 56C stainless steel tanks which form the components of the water cooler and copper tubing to job worker referred to in the rule as secondary manufacture. This job worker wound the coil around outside the tank and braized it to the external surface and returned the resultant product. This product is utilised in the manufacture of water coolers. Rule 56C, as it stood at the relevant time, reads as below: Rule 56C. Special procedure for the movement of finished goods falling under Item No 68 without payment of duty.- (1) Notwithstanding anything contained in Rule 9 or Rule 9A, the Collector may, by special order and subject to the execution of a bond and such other condition as may be specified by him and subject to the provisions of Sub-rule (2), permit a manufacturer (hereafter in this rule referred to as the primary manufacturer) to bring any excisable goods falling under Item No. 68 of the First Schedule to the Act (the goods so brought being hereafter in this rule referred to as the finished goods) to his factory without payment of duty (from the factory of a secondary manufacturer) if such goods

were made out of- supplied by the primary manufacturer for the purposes of manufacturer of the finished goods: Provided that where goods referred to in Clause (a) are manufactured by the primary manufacturer, such goods may, for the purposes of the manufacture of the finished goods, be removed from his factory without payment of duty:" 2. Notice dated 30.12.1986 issued to the appellant proposed to recover duty on the goods that the appellant received from the secondary manufacturer on the ground that what it received was evaporators classifiable in Item 29E of the tariff and not classifiable in Item 68 and thus not entitled to be covered by the provisions of Rule 56C. The duty demanded in the notice took the value of the tubes. By a subsequent corrigendum, the duty was demanded on cost in addition to the steel tanks. The assessable in reply contended that the goods were not in fact evaporated and that the evaporators is only put the copper tube on to the tanks. It also disputed the applicability of the extended period of limitation (since the duty was demanded for the goods received in 1.12.1981 to 10.7.1985) on the ground that full disclosure has been made of the processes involved and the goods that it received in the application that it filed under Rule 56C.3. The Commissioner did not accept these contentions. He found that the complete unit consisting of the tank which was wound copper tube will be evaporated. He also upheld the applicability of the extended period and confirmed the demand for duty and imposed a penalty. Hence this appeal.

4. Having heard the counsel for the appellant on the merits as well as on limitation, we proceed to decide the issue on merits, recording only that the argument on limitation has not been considered.

5. The contention on merits is as follows. The evaporator is that part of refrigerating machinery in which the liquified refrigerant is cooled by making use of the dirt and heat of the substance which isThe substance which is to be cooled in the boiler is the water in the steel tank. The evaporator or cooling coil copper tube wounded around the steel tanks. These tubes which alone perform the function of the cooling of the water in the tank. The tank is clearly nothing more than a receptive of the water which is to be cooled. In technical usage, it is only the tube or other such substance in which the heat exchange take place that is referred to as the evaporator and not receptible.

The departmental representative emphasises what the Commissioner has found.

6. The Indian Standard Institution IS:3615 - 1967 Glossary of terms used in refrigeration and air conditioning contains definition in Section 2 terminology. Entry 2.68 defines Coil, Cooling - An arrangement of pipe or tube which transfers heat from air to a refrigerant or brine. Entry 2.150 defines Evaporator - "That part of a refrigerating system in which refrigerant is vaporized to produce refrigeration." These definitions to our mind clearly indicate that the evaporator, which could be termed a cooling coil or other type, only refer to particular part of the refrigerating system in which refrigerant itself is rest. That in the case before us is the copper tube. Reference is also made to the book Basic Refrigeration and air conditioning by P.N. Ananthanarayanan published by Tata McGraw Hill Publishing Company Ltd. second edition 1996. In chapter 3 it deals with the refrigeration cycle (vapour compression system) "Refrigeration can be produced by allowing a liquid refrigerant, say R-12, from a cylinder to pass and boil inside a coil or evaporator." Chapter 9 of the book deals with evaporators. The book explains that the process of heat removal from the substance to be cooled or refrigerated is done in the evaporator. The liquid refrigerant is vaporized inside the evaporator (coil or shell) in order to remove heat from a fluid such as air, water or brine." Among the type of construction of evaporation is bare tube evaporator. This type is also called a prime surface evaporator. In this the entire surface of the coil is in contact with the refrigerant inside. These are constructed out of copper tube or steel pipes." These excerpts make it clear in our mind that the evaporator is the coil and not the tank in which the coil was wound.

The basis advances by the Commissioner for considering the assembly of the entire tank as coil to the evaporator is therefore unacceptable.

7. The departmental representative then contends that the assembly of tank and coil is itself an identifiable of a water cooler and thus part of the water cooler classifiable under Item 29A(3). This contention appears to us to be correct. Indian Standard IS:1475 - 1978 refers to cooling unit or storage unit of water cooler as consisting of storage tanks and a sur(SIC) as the heat exchanger. It goes on to say (SIC) cooling oil it tank and exterior to thermal contact."? Therefore, the

assembly in question is a cooling unit and thus an item classifiable in Item 29A(3). However, this amounts to making a new case. The notice proceeded not solely on the basis that the assembly and thus part of the water cooler. The case has been set out or that an assembly was an evaporator and therefore part of the item classifiable in Item 29A. The Commissioner, after reproducing the definition referred to of a cooling unit in the ISI relies upon not to conclude that the assembly is a cooling unit and hence classifiable in Item 29A(3) but to derive support for his conclusion that the entire assembly is an evaporator.

It was thus not the intention in the notice and clearly not in the Commissioner's order to seek to deny the facility contained in Rule 56C by treating the assembly as a cooling unit. It is now not permissible to deny the exemption by treating it as a cooling unit. The judgment of the Supreme Court in (113) ELT 24 is the authority for this proposition.

8. The alternative contention contained in addition to the ground of appeal which is the subject matter in the miscellaneous application is also to be considered. It is that if the department's case is correct, and the assembly are not classifiable in Item 68, the provisions of Rule 56C will not apply. In that event, the duty on these goods is to be paid by its manufacturer and not by the appellant who received the goods. This contention has to be accepted. We do not find anything in the provisions of Rule 56C. Among the fundamental requisite for application of Rule 56C is that the goods received by the primary manufacturer must fall in item 68 of the tariff. If they do not, the rule will not apply at all. The rule specifically operates notwithstanding anything contained in Rule 9. The rule does not apply then by application of this rule to the actual physical manufacturer of the goods who has to pay duty.

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