

Jay YuhshIn Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-02-2003

Reported in : (2003)(90)ECC308

Judge : S Kang, M T K.D.

Appellant : Jay YuhshIn Ltd.

Respondent : Cce

Judgement :

1. The appellant in this case challenges the classification of "heater control lever" and "panel heater control" (Hereinafter referred to as, "impugned goods"). The company is manufacturing auto-electrical, mechanical and electronic equipments. A major portion of applicants' production is sold to M/s Maruti Udyog Ltd. Gurgaon (for short "MUL").

Whatever duty is paid by the applicants on the items manufactured and cleared by them. MUL takes the same as MODVAT credit 2. Applicants started manufacture of the impugned goods from the year 1991-92. These items are used in the various models of Maruti cars both A/c and non A/c like Esteem, Maruti 1000, Zen Gypsy, 800 cc etc. They filed classification lists with the Central Excise Department under Rule 173B of the Rules from time to time. In these classification lists, applicants claimed classification of these two items under Heading No. 84.14, sub-heading No. 8414.99. All these classification lists were approved by the Department from time to time. Based on the approved classification lists,

applicants had been clearing the said goods on payment applicable central excise duty under sub-heading No.8414.99 of the Tariff.

3. A show cause notice dated 18.3.1999 was issued by the Commissioner of Central Excise, Delhi-III proposing to classify the said goods under sub-heading No. 8415.00 and demand differential duty of Rs. 1,99,60,142 for the period from 1994-95 to 1997-98. The notice invoked the extended period of limitation under proviso to Section 11A of the Act by alleging suppression of facts on the part of the applicants.

4. The notice also sought to include the cost of free supply items supplied by MUL, in the value of the said goods and demand duty on the higher value.

5. The Commissioner of Central Excise Delhi-III passed adjudication order dated 28.2.2000, confirming the demand of differential duty and imposing penalty on the appellant. On appeal, however, the Hon'ble CEGAT passed Final Order No. 1524/2000-B dated 28.9.2000 remanding the matter to the learned Commissioner for de novo adjudication.

6. In the meantime, another show cause notice dated 24.8.2000 was issued on the lines of the earlier show cause notice proposing classification of the items under Heading 84.15 and demanding SED (Special Excise Duty) of Rs. 10,99,934 for the period from 1.3.2000 to 30.6.2000.

7. In the de novo proceedings, the applicants filed written submissions in respect of both the show cause notices before the learned Commissioner and prayed for discharge of both the show cause notices.

8. The Commissioner of Central Excise, Delhi-III passed the impugned order-in-original confirming the duty demand under proviso to Section 11A of the Act, and imposing equivalent amount of penalty under Section 11AC of the Act and levying legal interest under Section 11AB of the Act. Hence the present appeal.

9. We have heard the learned counsel for the appellants and the learned DR. In the appeal it has been pleaded that the "heater control lever assembly" and "panel heater control" are not classifiable under sub-heading No. 8415.00 but under

heading No. 84.14. The two items do not form the part of car air-conditioner. These are fitted in AC as well as non-AC versions of Maruti cars. The function is to control and regulate the flow of air inside the car. The adjustments of levers provided in the panel facilitate selection of or shutting out of hot air/fresh air. In an air-conditioned car third option of facilitating cool air circulation is also achieved by adjustment of the appropriate lever. The items in question are fitted on to the dashboard of the car in conjunction with the blower fitted in the car. These have no connection with the functioning of the car air-conditioner.

10 It was explained during the personal hearing by the Ld. Counsel that the function could be comparable with the function of the air duct of split air-conditioners where the ducts facilitate to direct the flow of cool air to a desired destination. It was pleaded that the parts of air ducting system of aluminium have been held by the Hon'ble Supreme Court to fall under Heading No. 7616.90 of CETA, 1935 instead of Heading No.84.15 as claimed by the department. On similar analogy the impugned goods cannot be considered as falling under Heading No. 84.15. The question of classification under Heading No. 84.15 can arise only in the event the said items fulfil the test laid down in Note No. 2(b) of Section XVI of the Tariff. The said Section Note 2(b) requires that "parts if suitable for use solely or principally with a particular kind of machine.....are to be classified with the machines of that kind. In the instant case, in order to merit classification under Heading No.84.15, it needs to be demonstrated that the said items are suitable for use solely or principally with the car air-conditioner. The use in this case is only with the "blower". The blower is classifiable under Heading No. 84.14 about which there is no doubt. The learned counsel pleads that for the reason these items are fixed on the dashboard of the car alongwith the blower, they may be considered as parts of blower, classifiable under Heading No. 84.14.

11. It has been further pleaded that, in the event claim for classification under Heading No. 84.14 is not acceptable, the classification may be considered under Heading No. 84.79. The main function of the goods is to deflect the current of air generated by the respective source. In the Heading No. 84.01 to 84.78 this function has not been mentioned. The classification under Chapter 84 as per the Chapter Notes and the Section Note is to be considered, based on the individual

function of the machinery and the mechanical appliances. The residuary Heading No. 84.79 is meant for classifying machines the functions of which are not listed in the preceding entries 84.01 to 84.78. Obviously, the functions of air deflection is not specified in any of the headings viz. 84.01 to 84.78. Therefore, it has been pleaded that heading No. 84.79 could be the most appropriate and in that even also, there could be no ground for demanding any differential duty, as the duty rates are the same under both the heading.

12. In order to support the arguments to rule out classification under Heading No. 84.15 reference was invited to Board's Circulars No.548/44/2000-CX dated 13.9.2000 which over rules the previous Circular No. 121/32/95 dated 2.5.1995. In the circular dated 13.9.2000 it has been clarified that, if the grills manufactured are suitable for use solely or principally with an air-conditioning machine/system, then the same is held excisable and dutiable under Chapter heading No. 84.15. In the present case it has been demonstrated that the items in question have no nexus with car air-conditioners. Reliance was also placed on the CEGAT judgment in *Sachins Impex v. CCE, Mumbai, 2002 (79) ECC 747 (Tri-Mumbai) : 2002 (141) ELT 378 (Tri-Mumbai)*, in which it has been held that air ducting system, components of-flow, core, diffuser etc.

made of aluminium are classifiable under sub-heading No. 7616.90 of Central Excise Tariff Act, 1985. (This decision has been confirmed by the Supreme Court as per the report appearing in Revenue Law Times 2002 Vol-50 Page F. 13).

13. The learned DR has vehemently argued in favour of classification under Heading No. 84.15 as confirmed by the Commissioner. He produced a copy of "automotive encyclopedia South Holland, Illinois, The Goodheart Willcox Company, Inc." He also submitted a Xerox copy of the product range pamphlet brought out by the appellants. The "heater control lever assembly" finds mention therein as one of the product amongst the range of products sold by the appellants. Accordingly, he pleads that these have to be considered as parts of air-conditioner. He also pleaded that the service manual prescribes requirement of regular checks of the heater control lever assembly only in respect of AC cars. Because this requirement is not mentioned in the encyclopedia for non-AC cars,

the DR pleads that these panels have to be considered as part of the car air-conditioners. So far as this argument is concerned, it is without basis. The service manual of AC car can state the requirement of AC cars only. Non-mention of regular checks in a non-AC cars cannot mean that the heater control lever assembly is a part of only AC car. No such ground is mentioned in the order of the Commissioner.

13.1 It is further pleaded that at least the ground of use "principally" with car AC gets satisfied in this case to merit classification under Heading No. 84.15. It was asserted by the DR that the said panels function only with the AC.14. We have given our anxious considerations to rival contentions. It is not a disputed fact that the impugned goods in question are also fitted to a non-air-conditioned car. The principal function is to control the flow of air from the respective source. The output is a fresh air, hot air or cool air depending upon how the levers and flaps are adjusted. When there is no source of cool air (as in a non AC car) the panels provide only two options viz. the fresh air or hot air.

These functions have not connection with car air-conditioner, either incidental or ancillary. In the Automotive Encyclopedia submitted during the hearing by the DR, the function of the car air-conditioner is explained as under: 1 Hot refrigerant vapour (gas) is drawn into the compressor, where the gas is placed under high pressure and is pumped into the condenser.

2. In the condenser, a change occurs as intake air passing through the core removes heat from the refrigerant vapour as it changes to its liquid state.

3. The refrigerant, having done its job of discharging the heat, then flows into the receiver-drier where it is filtered, demisterized and stored for use as required to meet cooling needs.

4. As the compressor continues to draw refrigerant vapour from the outlet side of the evaporator, liquid refrigerant under high pressure is circulated from the receiver-drier to the thermostatic expansion valve.

5. The expansion valve then meters the refrigerant into the inlet side of the evaporator.

6. Pressure drops at this point in the system as the refrigerant, suddenly released to the broad area of the evaporator coils, vaporizes and absorbs heat from the air in the passenger compartment.

7. This heat-laden refrigerant vapor is then drawn into the compressor to start another refrigeration cycle.

In operation, the refrigerant constantly recycles in the sealed system from a gas to a liquid to a gas. Meanwhile, heat in the passenger compartment is constantly being absorbed by the refrigerant and carried away under pressure to be given off to the atmosphere. So, in effect, the automotive air conditioning system is a heat transfer unit, cooling the air by removing the heat".

15. In the entire working process of the car air-conditioner extracted above there is no mention of the control panel or heater control assembly being concerned with the function of air-conditioner. It is obvious that there is no reference to the said panels being part of the AC system. The learned DR pleaded that since the fitment of these panels would facilitate installation of AC in a non-AC car, these should be treated as the parts of AC.16. Firstly, there is no merit in the argument and no such grounds are also canvassed in the Commissioner's order-in-original.

17. We are, therefore, of the view that the claim for classification under Heading No. 84.15 is devoid of merits and deserves to be rejected and hence rejected. However, the claim for classification of these panels under Heading No. 84.14 is also not justified for the reason that these are not fixed to the blower to complete the assembly thereof. Blower is fully manufactured and installed as an independent machine and these components do not in any way add to completion of its manufacture. Since as already discussed there is no specific entry in Headings No. 84.01 to 84.78 to accommodate machines whose function is to deflect air. The proper classification would be under heading No.84.79. The entire proceedings refer to these goods as being parts and not an appliance. Therefore, classification would be appropriate under Heading No. 8479.90.

18. The learned counsel has also pleaded that there is no suppression etc. to warrant issue of demand by invoking larger period of limitation contained in Section 11A of the Act. Keeping in mind the fact that we have over-ruled the classification under Heading No. 84.15 it is not necessary to examine the aspect of limitation since there are no grounds for demanding duty on account of misclassification.

19. During the hearing it was also pleaded by the learned counsel that the issue relating to under-valuation on account of non-inclusion of the value of free of cost items (FOC) supplied free of cost by the customers in the assessable value of these goods is not a subject-matter of the present appeal. It was pleaded that the appellants had already deposited the amount of Rs. 61,09,650 quantified by the Commissioner in the impugned order relating to this issue, before the issue of show cause notice. The Ld. Counsel therefore, pleads that there is no case of imposition of any penalty under Section 11AC of the Act in this case relating to this portion of the duty demand.

20. We have carefully considered the arguments advanced by the Ld.

Counsel. It is true that the payment has been made voluntarily even before the issue of SCN. However, the fact remains that the short payment arose on account of non-disclosure of information regarding FOC supplies. Notwithstanding this fact, intention to evade is not apparent on the face of the case inasmuch as, whatever extra duty is paid on these components, a corresponding credit was available to the customer.

Hence there was no gain to the revenue consequent to realization of this extra duty. Keeping in view the facts and circumstances of this case, we hold that this portion of penalty imposed under Section 11AC deserves to be set aside. The remaining portion of penalty being related to classification also deserves to be set aside, as there is no case for demanding differential duty on account of reclassification as discussed above. Accordingly, we set aside the entire amount of penalty imposed under Section 11AC.21. The Ld. SDR furnished a post-hearing note. The case law enclosed essentially relied on the argument that the components, which have specific use, principally or solely, with an AC machines

should be considered as parts of air-conditioners. These case laws do not help the Revenue since in the instant case the parts cannot be said to be identifiable as being made for specific use in air-conditioners. So far as the case law furnished, on limitations are concerned, these are also not relevant because this issue does not call for any discussion in terms of the view taken by us on the classification. On the question of valuation since duty has already been paid and not in challenge, there is no need TO discuss various case laws on limitation.

22. In the circumstances, the appeal succeeds and the same is allowed with consequential relief, if any.

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