

Collector of Central Excise Vs. Air Conditioning Corpn. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-18-1987

Reported in : (1987)(12)ECC64

Appellant : Collector of Central Excise

Respondent : Air Conditioning Corpn. Ltd.

Judgement :

1. The respondents manufacture two parts of Blowers - Impellers and Propellers. They use them in the assembly of air conditioners and water coolers manufactured by them. When fitted inside an air conditioner or water cooler, the two parts, alongwith the motor of the air-conditioner and the water cooler, assume the form and shape of an electric blower or fan and function as such. The controversy in this appeal is whether such electric blower or fan should be charged to duty under item 33(3) of the Central Excise Tariff.

2. The Appellate Collector, whose impugned order is sought to be set aside by the department, took the view that such blowers were without a casing and were commercially not known as electric blower or fan. The learned representative of the department slated that the frame of the air-conditioner or the water cooler itself served as a casing for the blower. He introduced photographs of the blower and invited our attention to page 706 of the Mc~ Graw Hill Concise Encyclopedia of Science and Technology and the rulings reported at 1981 (8) E.L.T. 809 (GOI) and 1982 (10) E.L.T. 320 (Cal.) to make his point that such assemblies of Impellers and Propellers were electric blowers and were commercially known as such. He

also referred to the respondent's letter dated 29-10-1975 addressed to the Superintendent of Central Excise in which the respondents had admitted that the item was a blower.

3. The respondents did not contest that their assembly of Impeller and Propeller, in conjunction with the motor of the air-conditioner or the water cooler, produced an electric blower. The point that they stressed was that such blower came into existence inside the air-conditioner or the water cooler. It is not that they first assembled an electric blower or fan and then fitted it into the air-conditioner or the water cooler. Consequently, there was no removal of the electric blower. What they removed were only air-conditioners and water coolers on which they paid duty @ 100% ad valorem. They placed reliance on the Tariff Advice No. 11/75 dated 11-4-1975, issued by the Central Board of Excise and Customs, in which it had been stated that if the parts had assumed the shape of a blower or fan in an identifiable manner before their use in the air-conditioner or evaporative coolers, they would be classifiable under item 33 (3). The respondents stressed the word 'before' occurring in the Tariff Advice and asserted that in their case the blower did not come into an existence before fitment to the air-conditioner or the water cooler. They stated that they were guided by this Tariff Advice and they were, therefore, entitled to the benefit of the doctrine of promissory estoppel, vide Supreme Court judgment in the case of Godfrey Philips 1985 (22) E.L.T. 306 (S.C.). The period of dispute in their case was 1978 and 1979.

4. In a brief rejoinder, the learned representative of the department stated that the Tariff Advice dated 11-4-1975 aforesaid stood superseded by the subsequent circular letter of the Board dated 23-6-1975 in which it was stated that when fan blades were fitted to electric motors during manufacture of bottle coolers, it brought into existence electric fans which were liable to duty under item 33 (3).

The respondents stated that the case of bottle cooler fans was clearly distinguishable inasmuch as in that case the fans were first assembled as such and then taken for fitment inside the bottle coolers while in their case no such thing happened.

5. We have given the matter our careful consideration. The learned representative of the department did not deny the respondents' point that in their case the electric blower come into existence in an identifiable form only inside an air-conditioner or water cooler. In the circumstances, we agree with the respondents that since they did not manufacture an electric blower or fan as such as first and then take it for fitment into the air-conditioner or the water cooler, there was no removal of electric blower or fan in terms of Rules 9 and 49 of the Central Excise Rules, 1944. The learned representative of the department stated that the blower was removed inside the air-conditioner or the water cooler. We do not agree with him. What the respondents removed were only air conditioners and water coolers, the two articles known as such and having a distinct identity of their own.

Though each of these machines had an electric blower fitted inside them, it could not be said that they were manufacturing and removing blowers as such. In the facts and circumstances of their case, there was no removal of electric blowers even for captive use because blowers as such never came into existence outside the air-conditioner or the water cooler. The respondents were also entitled to the benefit of promissory estoppel arising out of the Board's Tariff Advice.

6. In the circumstances, we discharge the Revision Show Cause Notice and dismissing this appeal.

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