

Collector of Central Excise Vs. Voltas Ltd.

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Court : Mumbai

Decided On : Jan-20-1992

Reported in : 1992(59)ELT44(Bom)

Judge : M.L. Pendse and;S.H. Kapadia, JJ.

Acts : [Central Excise Act, 1944](#) - Sections 36(2); [Customs Tariff Act, 1975](#)

Appeal No. : Appeal No. 1021 of 1988

Appellant : Collector of Central Excise

Respondent : Voltas Ltd.

Advocate for Def. : Mr. D.B. Shroff,;Mr. B.H. Antis and;Mr. H.N. Vakil, Advs.,
i/b.,;M/s. Mulla &;Mulla Cragie Blunt &;Caroe

Advocate for Pet/Ap. : Mr. R.V. Desai and;Mr. P.N. Menon, Advs.

Judgement :

Pendse, J.

1. This is an appeal preferred by Union of India to challenge judgment dated March 16, 1988 passed by the learned single Judge in Writ Petition No. 261 of 1981. By the impugned judgment, the learned Judge allowed the petition filed by the respondent-company and set aside the order dated September 26, 1980

passed by Government of India, Ministry of Finance, Department of Revenue, in exercise of powers under Section 36(2) of the Central Excises and Salt Act.

2. The respondent-company is registered under the provisions of the Companies Act and is engaged in manufacture of air-conditioners and water coolers and has a factory at Thane. Some of the essential parts of air-conditioners and water coolers are impellers (alternatively called blowers), motors and propellers. The company purchased the said parts from different suppliers and then these parts and other parts are assembled to bring into existence the end products like air-conditioners and water coolers. The function of the propeller on the condenser side is to take the outside air from the atmosphere and force it through the condenser back into the atmosphere. By this process, the refrigerant gas is condensed. The blower on the evaporator side takes air from the room and force it through a cooling coil thereby evaporating the liquid refrigerant. This results in lowering the temperature and the humidity in the room. The motor drives the propeller and the blower both of which are housed in the air-conditioner and are attached to the two opposite ends of the shaft of the motor. The motor itself has no independent base of mounting. For functioning of air-conditioners, certain other essential items are required such as inlet cone, a scroll, a partition plate and a venture. The inlet cone facilitates the intake of air while the scroll is an indivisible and integral part of the air-conditioner and provides for movement of air over the evaporator. The partition plate divides the hot and cold side of the refrigeration system in the air-conditioner. The venturi creates particular operating characteristics required for the condensation of the refrigerant gas.

3. The Superintendent, Central Excise, Range I, Thane, by communication dated February 7, 1972 informed the company that machine like blower and condensor fans are manufactured and fitted in refrigeration and air-conditioners and that manufacture falls under 'industrial fans' as set out in Tariff Item No. 33(2) and excise duty is leviable from May 29, 1971. The company was, therefore, called upon to apply for L-4 licence for the manufacture and pay excise duty on all industrial fans manufactured and cleared from May 29, 1971. The company sent reply dated March 29, 1972 pointing out that the company does not manufacture fans falling under Tariff Item No. 33. The company pointed out that blower wheels

of fans are obtained from the market and are used for assembly of air-conditioners and water coolers and on such assembly, the blower wheels lose their identity. The Superintendent, Central Excise, by order dated July 28, 1972 informed the company that the manufacture of industrial fans (blowers) attracts duty under Tariff Item No. 33(2) and the company should obtain L-4 licence and pay duty.

4. The company challenged the order of the Superintendent, Central Excise, by filing an appeal before the Appellate Collector of Central Excise and the Appeal was allowed by order dated November 22, 1974. The Appellate Collector held that the impellers and electric motors on assembly form an integral part of air-conditioners and water coolers and as such, the impellers and electric motors cannot attract duty under Tariff Item No. 33. The Appellate Collector also noticed that the fan and motor combination do not have their own mounting system nor the regulators. The Appellate Collector held that the functions of the impeller and motor when mounted into air-conditioners and water coolers are quite different from electric fans referred to in Tariff Item No. 33. On the strength of these findings, the Appellate Collector set aside the order passed by the Superintendent, Central Excise.

The Central Government, in exercise of powers under Section 36(2) of the Central Excises and Salt Act, decided to review the order passed by the Appellate Collector and served notice on the company to show cause why the electric fans should not be levied with duty payable under Tariff Item No. 33(3). The company appeared before the Government and pointed out that motor and impeller is not known as fans in commercial parlance and even technically, the assembly of air-conditioners and water coolers cannot be considered as fans. The company also pointed out that the motor and impeller are nothing but integral components of air-conditioners and water coolers and have no independent mounting or speed regulators. The Central Government by order dated September 26, 1980 held that functionally as well as structurally, the impeller motor assembly used by the company in air-conditioners and water coolers are appropriately classifiable as electric fans and chargeable to duty under sub-item (3) of Tariff Item No. 33. To arrive at this conclusion, the Government relied upon the definition in Chapter 84.11 of the Brussels Tariff Nomenclature. The Government felt that the term

'electric fans' would signify that it should (a) perform the function of an electric fan and (b) work through electricity and as these two requirements are satisfied, the company is liable to pay duty.

5. The decision recorded by the Government was challenged by the company by filing Writ Petition No. 261 of 1981 and the learned single Judge by the impugned judgment set aside the conclusion of the Central Government and restored that of the Appellate Collector. The learned Judge felt that the reliance on Brussels Tariff Nomenclature by the Central Government was inaccurate as the Central Government failed to notice the contents of Chapter 84.12 as well as misread the contents of Chapter 84.11(c). The learned Judge found that the impeller motor assembly is not an electric fan. The decision of the single Judge is under challenge.

Mr. Desai, learned counsel appearing on behalf of the department, submitted that the learned single Judge was in error in disturbing the decision recorded by the Central Government in exercise of powers under Article 226 of the Constitution. The learned counsel also urged that it was not proper to rely upon the definitions in the Brussels Tariff Nomenclature as those definitions do not provide for a safe guide to determine whether the item is liable to duty under Central Excise Tariff. Mr. Desai submitted that it was incumbent upon the learned Judge to examine the function and utility of the item and uphold the order of the Central Government.

6. It is impossible to find any merit in any of the contentions raised by the learned counsel for the department. It is now well-settled by catena of decisions of the Supreme Court that the definitions set out in Brussels Tariff Nomenclature cannot be relied upon to hold as to whether the item attracts duty under Central Excise Tariff. A reference can be usefully made to the decision in *Atul Glass v. Collector*, reported in : 1986(25)ELT473(SC) . Mr. Desai is right in his submission that the definition either in Chapter 84.11 or Chapter 84.12 of the Brussels Tariff Nomenclature cannot determine the issue as to the liability of the company to pay the duty. The difficulty in the way of Mr. Desai is that the Government while exercising power under Section 36(2) of the Act has merely relied upon the definition in Chapter 84.11 of the Brussels Tariff Nomenclature. The learned single

Judge was right in observing that the Government misread the definition in the Nomenclature. The definition clearly sets out that the heading fans and blowers excludes fans and blowers fitted with elements additional to their motors or housing, if such elements give them the characteristics of more complex machines falling within other heading i.e. air heaters not electrically heated, air-conditioners, dust extractors, etc. The Government merely relied upon a part of the definition and ignored the relevant one. The learned Judge is also right in concluding that the definition under Chapter 84.12 supports the claim of the company.

Once the definition given in the Brussels Tariff Nomenclature is ignored, as rightly claimed by Mr. Desai for the department, then there is no material whatsoever to record a finding that the impellers and motors assembly can attract duty under Tariff Item No. 33. The Appellate Collector very rightly observed that the impellers and motors are fitted with other components like base pan, condensor coil, evaporator coil, compressor, piping for connecting base pan, condensor coil, etc., and the impellers lose their identity after such assembly and can never attract duty under Tariff Item No. 33. The Appellate Collector also noticed that the fan and motor combination have not their own mounting system, but are mounted in special brackets components forming part and parcel therein. Further, the switching of the fans as well as the speed control does not form part of the fan assembly, but is remotely located as part of the control console. The impellers and motors cannot be used as electrical fans because they do not have a base to stand on. The functions of the impeller and motor when mounted into air-conditioners are quite different from the electric fans. These findings of fact recorded by the Appellate Collector are not disturbed by the Central Government while reviewing the decision. In addition to this aspect, the company claimed that motor and impeller assembly is not known as fans in commercial parlance and even that assertion was not controverted by the Central Government. The claim of the company that the motors and impellers form integral components of air-conditioners and water coolers is also not challenged. In these circumstances, it is difficult to appreciate on what basis the Government could have disturbed the order of the Appellate Collector. In our judgment, the Government was clearly in error in setting at naught the order of the Appellate Collector in exercise of review jurisdiction and more so when there was no material whatsoever to warrant such

action. In our judgment, the learned single Judge was perfectly justified in disturbing the order passed by the Central Government. Mr. Desai was unable to point out any material in support of the claim that the integral parts of the air-conditioners or water coolers can be described as electric fans with regulators as provided by Tariff Item No. 33. In our judgment, the appeal is without any merit and must fail.

7. Accordingly, appeal is dismissed with costs.

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