Commissioner of Central Excise Vs. Voltas Air Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-10-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Voltas Air Industries Ltd.

Judgement :

1. Revenue is in appeal in this case, against the order of the Commissioner (Appeals), who has upheld the contentions of the respondents who had imported a consignment of fan for car air conditioners and sought their classification under Customs tariff Heading 8414.59, as fan and others. The Revenue's plea is to classify the said goods under Heading 84.15.90 on the grounds that: (i) the goods are admittedly specific fittings solely and principally suitable to be used as a part of car air conditioner.

(ii) The importer himself admits the same to be used for manufacture of air conditioning machines for cars.

(iii) On examination of the goods it was revealed that they were fans along with specific fittings which made them solely and principally suitable to be used as parts of auto air conditioners and therefore as per HSN Note at page 1163: "This heading excludes fans fitted with elements additional to their motors or housing (such as large dust separating cones, filters, cooling or heating elements and heat exchangers) if such elements give them the characteristics of more complex machines of other headings. E.g. air heaters, not electrically heated (heading 73.22, air conditioning machines (heading 84.15), dust extractors (heading 84.21), air coolers for the industrial treatment of materials (heading 84.19) or for premises (heading 84.79), electric space heating apparatus with built in fans (heading 85.16)." 2. The Ld Advocate for the respondent relies upon further note in HSN which reads as follows: "Compressors, air pumps, fans, blowers, etc., specifically constructed for use with other machines remain classified in this heading and not as parts of such other machines." and submits that in the respondents' own case decided by the Hon'ble Bombay High Court reported in 1988 (36) ELT 15 (Bom) where assembly of motor and propeller used in the manufacture of air conditioners and water coolers were held to be not treatable as electric fans as per interpretation of Heading 84.11 and 84.12 of the Brussels Tariff Nomenclature or and Item 33 (3) of the erstwhile Central Excise Tariff was nor applicable. Since in this case, the goods were not excluded from the HSN Notes inasmuch as they having reached a stage when the additional items thereon to have achieved the characteristics of more complex machines of other headings under 84 especially 84.15 and he relies upon certain photograph which show a fan in a housing to claim that merely fan with housing were not excluded from the heading as claimed by the importers and the HSN Notes exclusion clause relied upon by the revenue, In fact they should be included as per HSN Notes relied upon by the respondents.

3. From the records, it is not clear as to the fact as to how much of additional work and fittings were attached to the fans and the housings thereof and for this purpose, the matter is required to be re-examined after verification of facts which are not available at present before us. The order is therefore required to be set aside and remitted to the original authority with directions to hear the appellants, examine the catalogue and other materials as would be available in the departmental records and the respondents and thereafter determine whether the "items under import were excluded from the heading of fans or were included as per the HSN claimed by the respondents.