

Collector of Central Excise Vs. Nat Steel Equipment Private

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-08-1987

Reported in : (1987)(14)ECC290

Appellant : Collector of Central Excise

Respondent : Nat Steel Equipment Private

Judgement :

1. Appeal No. 1311/83 was filed before the Tribunal by the Revenue against the orders of Collector of Central Excise (Appeals), Bombay, passed in Order-in-Appeal No. A-379-380/B1-S1-S2/83 dated 8-3-1983. For completion of record, a Supplementary Appeal has since been filed and the Application for condonation has not been opposed by the Respondents.

3. The Respondents are manufacturers of 'Hospital and Pharmaceutical Appliances and Heavy Duty Industrial Canteen Equipment'. The following 14 items were classified by them under T.I.68 in their classification list No. 106 dated 27-3-1979 :- 4. The Asstt. Collector held the view that products 2 to 14 appeared to be classifiable under T.I.33C as they were covered under the Explanation given below the description of goods under T.I.33C. A notice was issued to the Respondents to show cause as to why the classification of the items should not be approved under T.I.33C, In their reply, the Respondents contended that earlier classification lists had been approved by the Department under T.I.68. Their representations were considered and orders were passed on 19-6-1980 holding that the products at serial Nos. 2 to 14 were rightly classifiable under T.I.33C in the

light of the Explanation - I to the said Tariff Item. Another show cause notice was issued on 8-9-1980 demanding differential duty amounting to Rs. 1,91,622.20 for the period 1-3-1979 to 30-6-1980. The Asstt. Collector confirmed the demand except in respect of the item Steam Jacketed Vessel.

5. Aggrieved against both these orders, the Respondents filed Appeals before the Collector. The Collector (Appeals) held in by a common order that as per the literature and the information supplied by the Respondents, items 2 to 14 could not be termed as domestic appliances because of their value, size, capacity and voltage of power required to operate these equipments. He held that they were classifiable under T.1.68 and not T.I.33C. The Revenue has come forward with these Appeals challenging the orders.

6. In the grounds of Appeal it is averred that the appellate authority has not taken into account Explanation - I appended to T.1.33C, which reads as under :- "Explanation - 1 'Domestic electrical appliances' means electrical appliances normally used in the household and similar appliances used in hotels, restaurants, hostels, offices, educational institutions, hospitals, train kitchens, aircraft or ship's pantries, canteens, tailoring establishments, laundry shops and hair dressing saloons".

It is submitted that the products manufactured by the Respondents are Heavy duty canteen equipments and are similar to the domestic electrical appliances such as cooking ranges, deep fat fryer, chapatty plates, dish washing machines, etc. If the Tariff description should be interpreted to apply only to the domestic appliances then the Explanation would be rendered redundant and meaningless.

7. Shri J.N. Nigam, S.D.R., drew our attention to the Explanation and submitted that in their classification list the Respondents themselves have admitted that these equipments are "used in industrial canteen and five-star hotels where bulk cooking is involved for serving foods to hundreds of people at a time." The catalogue issued for these Heavy duty canteen equipment reads as follows :- "Complementing this is the Company's heavy duty industrial catering equipment, manufactured to serve the needs of hotels, restaurants, hospitals, industrial canteens and many other institutions where bulk cooking is undertaken." It was

stated that items 2 and 8 of the list are not operated by electricity and hence they could be excluded. The Asstt. Collector could change the classification list despite the prior approval in certain circumstances, namely if the process of manufacture of the goods have changed, or if the relevant entries in the Tariff have undergone a modification, or if there has been a subsequent pronouncement of a High Court, or the Supreme Court, which necessitates reconsideration of the issue. It was urged that if fresh facts are brought on record which, if considered, would result in a different view being taken, the opening of a case on the basis of fresh facts would be necessary. Reliance was placed on New-chem Plastics 1984 ECR 658 (Tribunal). A modification of the classification list can be resorted to even under Rule-173-B(5). Reliance was placed on orders No.70-79 of 1987-BI dated 4-2-1987. The S.D.R., therefore, argued that the impugned order should be set aside.

8. Shri Gopal Prasad, Consultant, for the Respondents, urged that the appellate authority has adverted to Explanation - I of Tariff Item 33C. The term "similar" would mean "having characteristics in common", "which are very much alike". The appliances herein (most of them) function with 440 volts while the domestic electrical appliances can function only under 220 volts. He relied on 1983 ELT 1238 a ruling in respect of the Respondents' company, where a hospital equipment was classified under T.I.68 and the change to item 40 in disregard of the classification issued by the Ministry was held to be not justified.

9. Shri Gopal Prasad then urged that, in any event, the revision of the classification list could only be prospective and the Department was aware of the nature of the products manufactured. There was no finding that there was suppression and assuming that the classification should be under T.I.33C the demand would only be for a period of six months prior to the issue of the show cause notice.

(1) whether the products in question are to be classified under T.I.33C or under T.I.68? (2) Whether the Respondents are liable to pay the duty demanded? 11. On the first issue, it is common case that the Respondents manufacture the equipments which are used in industrial canteens, five-star hotels, etc. The nature of the items such as deep fat fryer, Espresso coffee machine, bread toaster,

chapatty plate, dish washing machines confirm that they are all electrically operated machines. The Respondents were filing classification lists under T.I.68. Two of the earlier classification lists filed by them on 4-3-1978 and 25-9-1978 were approved by the Department. But it cannot be disputed that a classification list can be revised under certain circumstances and for cogent reasons. It is urged on behalf of the Department that in view of the fresh facts that have come to the knowledge of the Department they were entitled to modify the classification. The letter addressed by the Asstt. Collector also reads that on an examination of the approval of the items, the above items did not appear to be classifiable under T.I.68. Even the Respondents do not dispute that the Department can modify their earlier approval, but they urged that it could only be prospective. Once the basis is established that the Department can modify an earlier classification, we have to find out whether the classification under Section 33 C would be justified. Tariff Entry 33C is in respect of "domestic electrical appliances not elsewhere specified". Explanation - 1 to the Tariff Entry, which has been reproduced in the earlier part of the judgment amplifies the intention of the legislature in respect of the term "domestic electrical appliances". From the nature of the goods it cannot be denied that they are normally used in household. According to the Department, similar appliances used in hotels, restaurants, hostels, offices, hospital, etc. would also attract duty under T.I.33C. According to the Respondents the classification under Section 33C would not be justified because these are Heavy duty canteen equipments. In their summary of submissions before the Collector of Central Excise, they have set out the following features in support of their contention that the products are not classifiable under T.I.33C :- (1) the above mentioned items are specially designed for use in very big canteens attached to industrial units, big hotels, hospitals, etc., where food in bulk quantity for hundreds of people is required to be prepared and served; (3) require electric power exceeding 230 volts in order to have considerable capacity for preparing and serving food; and These are stated to be very important and relevant factors for distinguishing the said items as distinct and different from those appliances which are used normally in the household. In view of this, it was argued that such Heavy duty equipments fall outside the purview of T.I. No. 33C. But the items are designed for use in hospitals, etc.

The main objection is that they required considerable floor space. But the space requirement depends upon the size of the item and the classification cannot be rested on that consideration. Secondly, it is stated that they required electrical power exceeding 230 volts. In the classification lists they have stated that Units having electric load up to 3KW are normally designed for working on single phase, 230 volts, 50 cycles supply and units having electric load more than 3KW are designed for operation on 400/440 volts, 3 phase, 50 cycles supply.

Their contention is that in view of the design for operation on 400/440 volts these items cannot be considered as domestic electrical appliances. But as rightly urged by the S.D.R., the Tariff entry or the Explanation do not contain any inbuilt restriction regarding the design for electric supply. As these items are admittedly Heavy duty canteen equipments with a view to withstand fluctuations and to maintain a continuous performance they have been specially designed to function under a higher voltage supply. This ground also will not justify a classification under T.I. 68. Of course, the prices of these items are higher when compared to the ordinary domestic electrical appliances.

But this factor again depends upon the design and the purpose for which such items are manufactured. So, the grounds on which the Respondents seek classification under T.I. 68 do not appear to be relevant.

(2) they should be normally used in the household and similar appliances used in hotels, etc.

The first requirement is satisfied. The term 'similar' has got a particular connotation. The term 'similar' does not mean identical. The term "similar¹ means nearly corresponding; resembling in many respects; somewhat like; having a general likeness. In a primary sense the term means nearly corresponding, resembling in many respects, somewhat like, having a general likeness (Law Lexicon by Shri T.P. Mukherjee). Thus, it follows that it is not necessary that only those type, design and size of items which are used in a domestic environment should be used in hotels, restaurants, hospitals, hostels, etc. If the items are similar appliances, normally used in the household, such as Espresso coffee machine, bread toaster, dish washing machine, etc., the liability to duty under T.I.

33C will arise.

13. In 1966 S.T.C. page 581 [Viswa & Company v. The State of Gujarat], the question arose whether electric fans would be domestic electrical appliances for the purpose of Bombay Sales Tax Act. At page 590 we find the following passage :- "A domestic electrical appliance, in our opinion, would be an electrical appliance of a kind generally used for domestic purposes.

It may also be used at places other than the home or the house, but that would not destroy the character of a domestic electrical appliance which attaches to it by reason of its being a kind of an electrical appliance generally used for the household. There are several electrical appliances which are generally used in the household, such as electric irons, electrical sewing machines and electrical cooking-ranges which are also used in other establishments. But these electrical appliances do not therefore cease to be domestic electrical appliances. It is of course not necessary that an electrical appliance, in order to satisfy the description of a domestic electrical appliance, must actually be used in the home or the house. What is necessary is that it must be of a kind which is generally used for household purposes and if that test is applied, there is no doubt that electric fans are domestic electrical appliances and the Tribunal was therefore right in holding that they fall within entry 52 of Schedule B." The above passage establishes that it is not necessary to be a domestic electrical appliance, it must be actually used in the home or the house. It must be of a kind which is generally used for household purposes. Applying that test, it is clear that the types of items concerned in this proceeding are generally used for household purposes.

The items, therefore, fall within the purview of Explanation-I to Tariff Item 33C.14. The Collector (Appeals) has held that these equipments could not generally or normally be considered or used as domestic appliances. If this were to mean that only those that are used as domestic electrical appliances would qualify for assessment under T.I. 33C, then Explanation-I would be rendered redundant for it refers to use in places other than a home or a house. This is another aspect which establishes that the assessment under T.I. 33C would be more appropriate.

15. We, therefore, uphold the classification under T.I. 33C. The decision cited by the Respondent reported in 1983 ELT 1238 is not relevant to the case, because it was in respect of certain clarification issued by the Ministry and on the particular facts of that proceeding.

16. The Asstt. Collector has confirmed the demand for duty from 1-3-1979 to 30-6-1980. As rightly urged on behalf of the Respondents, the prior classification lists were approved by the Department without any amendment. In the show cause notice dated 8-9-1980 there is an allegation that the products were classified under T.I. 68 with an intention to evade payment of duty under T.I. 33C. But this allegation has not been established and there is no finding by the Asstt.

Collector that there was a deliberate mis-statement in the classification list. In any event, when the Respondents have set out all the details in their classification list, and the Department has assessed the items under T.I. 68, there is no justification for the Revenue to turn round and allege that there was an intention to evade payment of duty. The modification of the classification list could only be prospective and not retrospective in the circumstances of the case.

17. On the question of demand, we are of the view that the demand could be sustained under Section 11-A only for a period of six months prior to the issue of the show -cause notice. In the absence of any proof of suppression of facts, the longer period of limitation would not be applicable. The show cause notice raising a demand of duty was issued on 8-9-1980. The demand is, therefore, sustained for the period 9-3-1980 to 30-6-1980 in respect of items 3 to 7 and 9 to 14. The Appeals are allowed with the above modifications.

18. The learned counsel for Nat Steel Equipment said that the goods whose assessment he disputes, that is, those which are electrically operated, are not similar to domestic electrical appliances or electrical appliances normally used in households. The appliances which he disputes are used in hotels etc. as heavy duty equipments for bulk cooking and so on, and operate on 440 volts; in size and weight they are far bigger and heavier than any equipments used in households. None of the goods produced by his clients under dispute are ever to be found in households. The voltage of the equipment alone will put them out of household

range and this is sufficient to show that they are not similar to electrical appliances normally used in households.

19. The question that arises is will the similarity extend only to a character of such equipment, that is to say, a toaster, or a fryer or a dish washing machine, and that the size would make no difference? Or would it extend to the first qualifying adjective domestic, that is to say, it should be of a kind ordinarily used or capable of being used in a household. If similarity means the equipment being capable of being used ordinarily in a household, then a large toaster suitable in hotels for bulk toasting work will certainly not qualify, because it is not used or ordinarily used in a household. But if similarity only means a machine that toasts, or that fries or that peels potatoes, no matter how big it may be and on what voltage it may run, then it means that the explanation is seriously faulty. There is no need for the explanation if only domestic household sized electrical appliances are meant. Appliances used in hotels, hospitals, restaurants, are always larger.

20. The explanation, simply by being present under the item, underlines the difference between two kinds of appliances - domestic appliances and similar but non-domestic appliances. An explanation cannot explain what is clear; it explains only what is doubtful or what may cause doubts.

21. Absence of the explanation would mean that only domestic electrical appliances, that is to say, those appliances used or ordinarily used in households, are covered by the heading, because the heading itself reads DOMESTIC ELECTRICAL APPLIANCES. Therefore, the appearance of the explanation seeks to convey that there is something more in the item than the mere literal meaning of the words. The meaning can only be, therefore, that when the explanation talks of similar appliances used in hotels, restaurants, etc. it means not similar appliances used in domestic households, but similar appliances not used in domestic households but used in hotels, restaurants and other public places. If this is taken to be the meaning of the explanation, then it carries a meaning and gives the heading a scope and expansion it did not have.

There is little doubt in my mind that the explanation was meant to extend the heading to similar appliances not ordinarily used in domestic households. I am,

therefore, of the opinion that electric toasters, electric cooking ranges, electric coffee machine etc. of large sizes running on voltages higher than the voltage available in households are also to be covered by the heading.

22. There is, to be sure, an anachronism. How can a toaster used in a hotel be similar to a toaster used in a family kitchen? I see no answer. The explanation says domestic electrical appliances used in households, and similar appliances used in hotels, etc. No appliance used in a hotel can be similar to a domestic appliance - it may be similar to the appliance, but it cannot be similar to the domestic appliance.

23. The dichotomy stands out, and the learned counsel for the asses-sees had good grounds for saying that the electrical appliances used in hotels etc. for their sheer size and power input alone would be not similar to domestic electrical appliances.

24. But, the explanation, faulty though it is, has a clear meaning.

That meaning is that a toaster, a washing machine, etc. useful only in places like hotels, restaurants, because of their sizes, are similar to domestic toasters and domestic washing machines even though they take 440 volts and are so large they are installed only in hotels, restaurants and places like that, and are to be covered by Item 33-C.25. Accordingly, I agree that the items fall under Heading 33-C. I also agree that there could not have been a suppression since the department themselves had assessed these items (under Item 68). They only changed their mind later and, as it happened, correctly, to assess them under Item 33-C. There is neither fraud nor suppression, and the period of demand, therefore, cannot run for more than six months from the date the demand notice was issued.

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