

Commissioner of Customs and Vs. Voltas Ltd.

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SooperKanoon Citation : sooperkanoon.com/36554

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-20-2004

Reported in : (2005)(180)ELT57Tri(Mum.)bai

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Commissioner of Customs and

Respondent : Voltas Ltd.

Judgement :

1. The appeal is filed by Revenue against the order of Commissioner (A) who held that vapour absorption unit manufactured by the respondent is classifiable under Chapter heading 8418 of CETA, as against 8415 decided by the lower adjudicating authority. The period under dispute is 92-93 and 93-94.

2. Briefly the facts are that the respondents claimed classification of vapour absorption unit in their classification list dated 22.12.92 and 12.8.93, seeking benefit of exemption under Notification No. 155/86 dt.

1.3.86 on the ground that their product is a heat pump. The Assistant Commissioner denied the exemption claimed, on the ground that the product is not a heat pump but is classifiable under chapter headings 8415 a heading meant for air-conditioning equipment. The Commissioner in appeal held that the goods are classifiable under 8418 for the following reasons.

"Commissioner (Appeals) has held that the product literature does not show any attachment of motor driven fan or elements capable of regulating temp or humidity which are essential of Air-conditioning machines and also the flow chart diagram given in to literature clearly indicates, that the machine is basically a heat pump of absorption type. Commissioner (A) has also considered the fact that the said product cleared by the assessee and not with regard to the capability of being used for Air-conditioning purposes with addition of certain parts. The product being a complete machine and its classification can be clearly conferred from the Tariff description itself, by exclusion or inclusion, and also from the explanatory note. The explanatory note clearly exclude only reversible type of heat pumps having attachments of blower and capable of manipulating temperature/humidity, which is under 8415. The said product is appropriately classifiable as refrigerating or freezing machinery under CH.Hdg. 8418. In view of the fact that the flow chart and the product literature clearly show that it is basically a complete absorption type of heat pump which produces chilled water for various applications and it does not have the necessary attachment for classification under 8415".

3. The Revenue contends that as per HSN for goods to be classified as a refrigerating appliance the temperature of the active cooling agent should be in the region of 0C or less. The technical data submitted by the manufacture reveals that the entire process in the absorption unit leaves the chilled water at 7C. Since the cooling temperature is not accordance with what has been stated in the explanatory note and since there is no specific mention of "Lithium Bromide solution as absorbent" (the appellants product is described to be so) in chapter heading 8418 of CETA the product goes out of this heading and falls under 8415.

5. A heat pump is provided with a generator, condenser and evaporator.

The respondents' product known as vapour absorption heat pumps (VAM) in capable of producing chilled water as well as hot. This capacity is one of the distinct characteristics of a heat pump. A buyer therefore can use the chilled water from the machine for industrial process chilling application or if the need arises can use the hot water for heating purposes. Both the uses are possible in a heat pump. The respondents' plea is that even if it is considered that VAM is not a heat pump

it cannot be denied that it is refrigerating equipment falling under 8418 of CETA.6. The Departments' contention is that it is not refrigerating equipment classifiable under 8418 of CETA. The main ground for such a contention is that in order to be fit for classification under 8418, the temperature of active cooling element should be 0C whereas in the respondents' case, the product that leaves the machine has 7C. It is therefore necessary to see the exact meaning of the expression "active cooling element". The active cooling element of refrigerating machines is the refrigerant water vapour and its temperature is 0C only. The Revenues contention that the active cooling element has 7C temperature is based on the temperature of the output. Even in a domestic refrigerator the active temperature inside the refrigerator is in the region of 13C. If the Departments' contention is to be accepted even the refrigerators do not fall under 8418. It is not the temperature of water at the outlet that determines the issue but the temperature of the active cooling element (refrigerant water vapour).

7. In the case of Carrier Aircon Ltd v. CCE Delhi [2001 (128) ELT 485] the Tribunal was dealing with an use of classification of chiller which is identical to the product we are concerned with. The Tribunal in that case held that a chiller is classifiable under 8418 as a refrigerating equipment and not as an air conditioning equipment under 8415 even if it is capable of being used in such equipment after clearance. This ratio is followed in a subsequent decision of the Tribunal in the case of Indian Hotels Ltd v. CC Chennai [2001 (134) ELT 451].

8. Following the ratio of the decisions cited above we hold that the product VAM is classifiable as refrigerating equipment under Chapter Heading 8418 and reject the Departments' appeal. We observe that the claim for benefit of exemption Notification No. 155/86 or its subsequent amendments is not specifically gone into in view of the appellants' plea that even if the product is not considered as a heat pump it is still a refrigerating equipment. During the relevant time heat pumps and refrigerating equipment attract different rates of duties under the exemption notification claimed by the respondent.

Suffice it to say that if the product is not considered as heat pump it is certainly refrigerating equipment. In both cases VAM falls under 8418.

