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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-14-2007

Reported in : (2007)(117)ECC138

Judge : R Abichandani, S T T.V.

Appellant : Allied Air Conditioning Corpn.

Respondent : Cce

Judgement :

1. The Hon'ble Supreme Court of India vide their judgment and Order in Civil Appeal No. 1100-1101 of 2001 made on 13^th September, 2006 remitted the matter to this Tribunal to consider the stand of the Revenue as regards the disputed items and deal with the items individually and also examine the rival stand on the question of limitation.

2. When the matter was called for hearing, none appeared for the appellants despite notice.

The appellants are the manufacturers of package type air conditioners, room air conditioners, water chilling plant, cooling towers, bottle coolers, deep freezer and air washers etc. After a visit by the Central Excise Officers on 07.03.1988, a show cause notice was issued to them on 12.10.1988 and later on 28.03.1989 demanding differential duty. Both the notices were adjudicated by the Collector on 30.03.1990/23.04.1990 partly in favour of the assessee and partly in favour of the

Revenue. On an appeal preferred by the appellants, the Tribunal vide its order dated 17.01.1993 remanded the matter to the Collector for reconsideration of the issue of limitation and also issues relating to valuation and rate of duty.

4. The Commissioner, on remand, confirmed the demand and imposed penalty holding that as the package type air conditioner was supplied against contract/tender, assessment cannot be made on the basis of assessable value which was not available in terms of Section 4(1)(a) of the Act. When the matter was taken up before the Tribunal again, the appellants submitted that a package type air conditioner is defined as self-contained unit primarily for floor mounting purpose, designed to provide free delivery of conditioned air to an enclosed space; that all the components going into the manufacture of such a unit are enclosed in a steel cabinet; that as per Tariff Item 29A(2) of the erstwhile Central Excise Tariff, the goods covered by the Tariff item were air conditioners and other air conditioning appliances which are ordinarily sold as ready assembled unit including package type air conditioner and evaporated type coolers. It was also argued that a package type air conditioner is the machinery, compressor, cooling coil, condenser and blower are all enclosed in a cabinet which can be mounted on the floor without any accessories, when room has to be cooled; that in cases where it was required to provide cooled air to more than one room, the same will have to be done through insulated ducts. The appellants had further relied upon the book "Refrigeration and Air Conditioning" by Shri V.K. Jain, according to which package air conditioning unit can be with inbuilt condenser or may have remote air cooled condensers also.

The appellants had also referred to the ISI specification for package air conditioners to show that package air conditioner is an enclosed assembly as a self-contained unit primarily for floor mounting, designed to provide free delivery of conditioned air to an enclosed space, room or zone. It was also the case of the appellants that ducting is only an accessory and not part of package unit. According to them, the package unit delivers cooled and dehumidified air and not humidified air and that humidification and heating system are not normally integral part of an air conditioning unit and are optional accessories; that cooling tower and pump are also accessories as these are required only in case of water cooled

condensers and the cooling tower is either installed on the roof of the building or outside the building on the ground; Plumbing material i.e. galvanized water pipe is also not part of the package unit and is required for conveying water to the cooling tower and pass it to the water cooled condensers; that the alleged material i.e. Board and Panels installed outside for the operation of the air conditioning unit and do not constitute simple switches as a room of air conditioner. The appellants relied upon the decision of the Hon'ble Supreme Court in the case of Sri Ram Bearing Ltd. v. CCE, Patna 1997 (91) ELT 255 (SC), wherein it was held that the value of accessories is not includible in the value of ball bearings which are only covered by Tariff Item 49. It was also the case of the appellants that after installation of the whole system, it become permanently fixed to the earth and no longer remains as goods as they become immovable. It was also the case of the appellants that the value of the accessories has to be first deducted to arrive at the assessable value of a package type air conditioner and that according to the calculation enclosed with the appeal memorandum duty liability for all these years would be NIL. It was also contended that the appellants had been filing classification list since April, 1983 and price lists since 1984, and hence extended period of limitation cannot be invoked. As regards filing of price list in Part-I, instead of Part-II, it was admitted that it was only a technical error due to their ignorance and there was no evidence to show that they had done this to conceal anything. It was also the contention of the appellants that the price list had been duly approved by the proper officer and, therefore, the allegation of suppression cannot be made against them. As far as the second Show Cause Notice dated 28.03.1989 is concerned, the Departmental Officer had become aware of the nature of their activities after visiting their factory on 07.03.1987 and that the Department was bound to issue Show Cause Notice within six months from the date the Department became aware of the activities of the manufacturer.

5. The learned SDR has taken us through the entire relevant record in respect of the question of limitation and also in connection with the individual items for which the findings are required to be given as per the remand order.

6. It was contended that the appellants in respect of the demand dated 12.10.1988 had mis-declared the value of various products in part-1 as they had no sale at the

factory gate for the packed type air conditioner unit. Relying upon the findings of the Commissioner, it was argued that all sales were of contract basis and as per the requirements of the customers. The break up cost of each component in the contract reveal that each contract was an independent sale per se.

It was also pointed out that as the assessee was filing Classification List and price list in Part-I, they were fully aware of the requirements under law and their obligation to declare the value in respect of each and every contract, which they never follow. As regards the show cause notice dated 28.03.1989, which alleged that the assessee willfully suppressed the correct information in their monthly RT-12 returns with intention to evade payment of duty. It was stated that the goods were cleared without the cover of central excise documents and without registering the production and clearances in the statutory registers. The assessee also did not file RT-12 returns with the copies of required documents. On this basis, it was argued that there was wilful suppression on the part of the assessee. In this context, the following observations were made by the learned Commissioner in the order-in-original: The party also did not file RT-12 returns with the copies of required documents. The value for the purpose of clearances was admittedly not taken into consideration in accordance with Central Excise law and, therefore, the charge of suppression of facts with intention to evade payment of duty is sustained against the party.

The departmental officers visited their premises on 13.10.1988 and the demand notice was issued on 23.3.1989. Even this date is well within the period of six months of the date of visit of the officers to obtain the details though there is no such statutory requirement.

In view of this, I hold that the extended period of demand is applicable in this case and the demand is not time barred.

7. In this case, the contracts/tenders entered into by the party are broadly divided into following components: The appellants had already accepted the inclusion of compressors and accessories in the value.

8. We find that the appellants had made clearances of the air conditioners without payment of duty by taking the plea that packaged type air conditioners had been cleared in a knocked down condition and were assembled in situ and as such they were not assessable as air-conditioners. It is clear from the record that the appellants were selling the air-conditioners by assembling the same at site through orders procured from various authorities by way of tenders/contracts.

Such contracts/tenders could be broadly divided into nine components as listed.

It is clear that in respect of such clearances, the appellants have blatantly violated the requirement by not filing price list in proper proforma. Instead of filing the price list in Part-II proforma, they have filed in Part-I proforma due to which the Department had no means to know the practice adopted by the appellants to clear packaged type air conditioners falling under Tariff Item 29-A of the erstwhile Tariff and Chapter Heading No. 84.15 of the Central Excise Tariff Act, 1985 without payment of duty leviable on them. Thus, it is clear that, at this stage, the appellants have no case whatsoever to feign ignorance and to argue that they have not suppressed the procedure adopted by them, which has corroded the exchequer. We, therefore, are of the view that the show cause notice issued to them has rightly invoked the extended period of limitation. We also find that the appellants are tight-lipped and had not provided the detailed reasons for non-inclusion of value in respect of pumps, cooling tower, ducting material, plumbing material and civil works. In our view, the pumps and cooling towers cannot be segregated from the package air-conditioning system as without them no air-conditioning could occur. It will be like having humans without heart or angels without wings! In our view, cooling towers cannot be deliberately side-lined and got excluded from the air-conditioning system as something remote or unconnected because of their role in lending meaning to the machinery. As regards the humidification and heating system, they are as much part of the air-conditioning system as much clutches or brakes in a motor vehicle.

Hence their value cannot simply be sponged out from the value of the package air conditioners. In fact, the very word 'package' referred to in the Tariff Entry connotes a "package deal", which could include anything which is connected

proximately or remotely with the workable air-conditioned mechanism. The ducting materials like arteries or veins should also be the necessary components as without them the conditioned air cannot find its target destination. Similarly, the plumbing material and electrical material all go to organize the system and make it functional. For, without plumbing material gases and water cannot reach the required spots and without the electrical material, the system will be simply dead. Normally no user while placing order for such "package air conditioning system" would place orders for items which are non-essential or extraneous - as these components have been made out in the appeals. The learned Commissioner in his order has, in fact, accommodated the appellants' plea insofar as the cost of civil work goes and has judiciously made suitable deduction from the assessable value on this account. We find that before the lower authorities, the appellants had referred to ISI Publication IS: 8148/1978 for the definition of 'Package Type Air-Conditioners'. The same is reproduced herein below: 2.0 For the purpose of this standard, the following definitions shall apply.

2.1 Packaged Air Conditioner, An encased assembly as a self container unit primarily for floor mounted, designed to provide free delivery of conditioned air in an enclosed space, room or zone (conditioned space). It includes a prime source of refrigeration for cooling and dehumidification and means for the circulation and cleaning of air, with or without external air distribution ducting.

It may also means for heating, humidifying or ventilating air.

2.1.1. These machines are equipped with either water cooled or air cooled condenser....

In this context, it is more relevant here to look into the Tariff Entry as existed at the relevant time. Item No. 29-A reads as follows, at the relevant point of time: REFRIGERATING AND AIR CONDITIONING APPLIANCES AND MACHINERY, ALL SORTS, AND PARTS THEREOF: (1.) Refrigerators and other refrigerating appliances which are ordinarily sold or offered for sale as ready assembled units, such as ice makers, bottle coolers, display cabinets (2) Air conditioners and other air-conditioning appliances, which are ordinarily sold or offered for sale as ready assembled units, including package type of air-conditioners and evaporative type

of coolers.

(3) Parts of refrigerating and air conditioning appliances and machinery, all sorts.

Chapter Heading 84.15 and 84.18 of Schedule 2 to the Central Excise Tariff Act, 1985 read as follows: Air-conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be repeatedly regulated Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air-conditioning machines of heading No. 84.15 A perusal of the Tariff structure as above has an obvious reference to the functions attributable to such an equipment or machine viz., "air-conditioning", "refrigerating", "freezing" etc. It is, therefore, clear that such functional fulfillments cannot be possible it a vital part or valve gets excluded. Incidentally, there is also an explanation in Notification No. 166/86-CE dated 1.3.1986 which goes to show that for the purpose of this notification, the duty leviable on split unit air conditioner will be apportioned equally between the cooling a room unit and condenser unit of such air-conditioner. This clearly indicates the intent of the Legislature to view the system "holistically", rather than as parts. We observe that the technical literature on record, relied upon by the appellants, is not in the context of the Tariff structure and the intent of the Legislature. This Tribunal's recent order in a similar matter (Frick India Ltd. v. CCE, Delhi reported in 2006 (203) ELT 82 (T-Del), heavily relied upon by the Revenue in also supportive to the inference reached by us here. For the reasons stated above, we hardly find any merit in various contentions made in the appeal that the impugned order of the Commissioner was in any way inadequate and bad in law. The appeals are, therefore, dismissed.