

Stormac India Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-05-1989

Reported in : (1989)(19)ECC290

Appellant : Stormac India Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The principal point of dispute in this appeal is whether the electric blower/fan assembled by the appellants inside the drier chamber manufactured by them was liable to Central Excise duty as an industrial fan under Item 33(2) of the erstwhile Central Excise Tariff.

2. On hearing both sides and on perusal of the record, we find that the appellants, inter alia, manufactured (i) Rotary Screen Printing Machine/Plant, (ii) Loop Steamer Machine/Plant and (iii) Impregnation Machine/Plant. These machines incorporate a drier chamber. The drier chamber is a huge box-like structure and its function is to dry, with hot air, the printed fabric/paper fed into it. The hot air circulates inside the chamber at a great pressure. Such circulation is provided by a blower/fan assembled by the appellants inside the drier chamber with the help of components purchased from the market. A show cause notice was issued to the appellants on 24-8-1983 for the period from 1-4-1979 to 28-2-1982. On adjudication, the Collector held that the blower/fan assembled inside the drier chamber was liable to duty under Item 33(2).

Holding that the appellants had suppressed the fact of manufacture of the blower/fan, the Collector invoked the larger time limit of 5 years and demanded duty for the entire period (1-4-1979 to 28-2-1982). In addition, on the charge of clandestine removal of the goods, the Collector imposed a penalty of Rs. 1,00,000/- on the appellants. The appellants are in appeal before us against this order.

3. We have given our earnest consideration to the arguments put forth by both sides. Item 33(2) of the tariff applied to industrial fans. Had the appellants first assembled an industrial fan and then removed it and fitted it inside the drier chamber, there is no doubt that the said fan would have been chargeable to duty on its removal for a captive consumption. But we are informed that the facts were not so. No blower/fan was assembled outside first and then removed and fitted into the drier chamber. The circulation device inside the drier chamber, no doubt, functioned like a blower/fan so far as the mechanical characteristics are concerned. But the device took shape inside the drier chamber only when the components were assembled and fitted therein. On such assembly, the fan became an integral part of the drier chamber. It had no separate existence as a fan nor could it function independently as a fan in its own right. Consequently, there was no question of it being brought to the market for being bought and sold as a fan. Its status was that of an integral component of the drier chamber and it was not a separately identifiable product (fan). The identifiable product which the appellants manufactured and removed was a drier chamber and not a fan.

4. In similar circumstances, this Tribunal held that the blower/fan which took shape inside an air-conditioner/water cooler was not an excisable item as fan [1987 (12) ECR 89 (Tribunal) - Collector of Central Excise, Calcutta v. Airconditioning Corporation Limited, Calcutta]. The ratio of this judgment aptly fits the facts of the present case.

5. The Learned Representative of the department, however, relied on the following two High Court judgments in support of his plea that the blower/fan which came into existence inside the drier chamber could be taxed as an industrial fan :- (ii) 1988 (34) E.L.T. 631 (P & H) - Darshan Singh Pavitter Singh v. U.O.I. We find that

the facts and circumstances of both these cases were quite different. In the Andhra Pradesh High Court case, chemical raw materials were injected into the cavities of a ship and there the raw materials took the shape of polyurethane foam. The Hon'ble High Court held that polyurethane foam was manufactured or produced and since it was a specific excisable item it had to pay the duty. In this case, there was no dispute between the parties that polyurethane foam came into existence on the raw material being injected. Even if it was taken out of the cavity, it would be identifiable as a separate commercial product (polyurethane foam). In the case before us, however, no separate commercially identifiable fan comes into existence. What does come into existence is a drier chamber with the fan as one of its integral components. The fan cannot be taken out and marketed as such.

On dismantling the drier chamber, one cannot get the fan but only some components which the appellants had originally purchased from outside and which they fitted inside the drier chamber to form the circulation device. The case before us is, therefore, not on par with the one dealt by the Hon'ble Andhra Pradesh High Court. In the Punjab & Haryana case, the Hon'ble High Court was concerned with a different Central Excise Tariff which statutorily taxed the activity of bus/truck body building as a separate and specific item. Item 33 of the old Central Excise Tariff did not have any such statutory scheme. Therefore, under the old tariff only commercially identifiable and separately marketable electric fans could be taxed as excisable goods.

6. Following the ratio of the earlier Tribunal decision in the case of M/s. Air-conditioning Corporation Ltd. aforesaid, we hold the fan/blower which took shape inside the drier chamber, as its integral part, was not liable to duty as an industrial fan under Item 33 (2) of the erstwhile Central Excise Tariff.

7. The appellants made some other legal and technical pleas also, including the plea of limitation. Since we have held in their favour on the substantive ground, we do not consider it necessary to go into their other pleas.

8. In the result, we set aside the lower order and allow this appeal with consequential relief to the appellants.