Collector of Central Excise Vs. Mahabir Export and Import Co. Pvt.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-19-1994

Reported in : (1994)(53)LC318Tri(Delhi)

Judge : G Agarwal, K T P.K.

Appellant : Collector of Central Excise

Respondent : Mahabir Export and Import Co. Pvt.

Judgement :

1. In these three appeals since the issue involved is the same, they are disposed of by this common order.

2. The question that arises for consideration in these cases is whether the Non-clog pumps and Coolant pumps manufactured by the respondents were correctly classifiable under Item 30-A of the erstwhile Central Excise Tariff or under Tariff Item 68 of the Central Excise Tariff. By the impugned order dated 1.10.1984 the Collector (Appeals) Central Excise, New Delhi, held that non-clog pump even though capable of pumping water mixed with mud and Coolant pump meant essentially for circulating oil in machine for keeping them cool were covered by Tariff Item 30-A since lubricating oil and muddy water (water mixed with mud) were covered by the term 'liquid' occurring in Tariff Item 30-A of the CET.3. Appearing on behalf of the appellants, Shri Sharad Bhansali, SDR referred to the literature in respect of 'Jyoti' Non-clog Centrifugal Pump filed by the appellants and stated that the respondents product was identical. He pointed out that such pumps

as claimed in the literature filed on behalf of the Department were designed essentially for handling 'liquids' such as sewage having suspended matter. He argued that on this (illegible) such pumps could not be deemed as covered by Item 30-A of the CET which covered "power driven pumps including motor pumps, turbo pumps and monoblock pump set for liquids whether or not fitted with measuring devices". He referred to the meaning of "liquid" in the Shorter Oxford English Dictionary (Third Edition) and contended that power driven pumps for liquid falling under Item 30-A would be only those pumps which were meant for handling liquid not having any suspended matter. As regards the dispute regarding classification of "Coolant Pumps" Shri Bhansali pointed out that the pumps in question manufactured by the respondents were similar to 'Jyoti' Coolant Pump in respect of which the literature had been filed on behalf of the appellant-Collector. He added that the 'coolant pumps' (illegible) were meant for circulating small quantities of lubricants against low heads on machine tools like lathes, drilling machines, milling machines, grinders, etc. He stated that in the absence of any literature showing that the 'coolant pumps' were an integral part of the internal combustion engines he was not pressing for their classification under Tariff Item 68.

4. No one appeared on behalf of the respondents who vide their letter dated 10.11.1993 have pleaded that the matter may be decided on merits on the basis of the material on record.

5. We have examined the records of the case and considered the submissions made on behalf of both sides. Since the appellant has not pressed for consideration of their claim that 'coolant pumps' would be classifiable under Tariff Item 30-A of the erstwhile Central Excise Tariff, the only question that arises for consideration is whether 'Non-clog pumps' manufactured by the respondents were classifiable under Tariff Item 30-A. According to the appellant the 'Non-clog pumps' in question were similar to 'Jyoti' Non-clog Centrifugal Pump. From the relevant literature filed by the Department in respect of such Non-clog Centrifugal Pump, we find that the manufacturers have given the following details in regard to their design and function: 'Jyoti' Non-clog Centrifugal pump offers a practical solution to these problems. Its adaptability to wide applications and its

uninterrupted trouble-free service make it an obvious choice amongst sewage-cum-chemical pumps.

'Jyoti' Non-clog pump is ideal for handling liquids such as sewage, stock, suspended matter, foundation water, sugarcane juice, milk of lime, alkalies, chemicals and hot liquids of varying composition, specific gravity, temperature, viscosity and PH value. It is useful in sewage stations, chemical industries, distilleries, laboratories, sugar mills, mines, ice plants and for similar applications. An outcome of market-oriented R & D efforts and sound technical know-how, 'Jyoti' Non-clog pump is an obvious choice resulting in sustained performance under specified conditions, easy adaptability, long-life economical operation and minimum maintenance.

It is seen that non-clog centrifugal pumps are meant for pumping of not only water but also various types of liquids such as milk of lime, sugarcane juice and even sewage which mainly consists of liquid with suspended material such as mud and other wastes. It is evident that the pumps in question are essentially designed for handling liquids of various types. In our opinion the fact that they are especially designed to handle even liquids which have suspended matter, such as mud particles etc. would not have the affect of removing them from the category of pumps under T.I. 30-A of the Central Excise Tariff which covers "Power Driven Pumps (including motor pumps, turbo pumps and monoblock pump set) for liquids whether or not fitted with measuring devices.Collector of Central Excise v. Fair Bank Morse (I) Ltd. handling non-clog pumps are classifiable as power driven pumps under T.I. 30A of the erstwhile Central Excise Tariff since liquid having suspended particle also fall in the category of 'liquid' or 'fluids'.

Paras 9 to 14 of the said order being relevant is reproduced below: 9. As seen from "The New Encyclopaedia Britannica, 15th Edition, Vol. 16, Macropaedia, page 582. that: Sewage systems are physical systems for the collection of waste water (emphasis supplied) 'and its treatment before discharge back into the environment. Thus sewage is nothing but waste water'.

10. As further seen from the same book, sewage divided into categories the (i) domestic i.e. arising in household or offices/business premises and (ii) industrial

i.e. arising in industrial establishments. Further from the definitions of liquid given above, liquids are fluids, flowing or capable of flowing.

11. A pump has been defined as a machine for raising of fluids i.e.

gases or liquids.

12. Conversely, anything which is capable of being raised by a pump, if not a gas will be a liquid, since a pump can only raise a fluid which term includes only gases and liquids.

13. Further as seen from Marks Standard Hand Book for Mechanical Engineers, 8th Edition, products like glue which contain suspended adhesives in a liquid as also lime water which also contains suspended particles in water, are included in the category of liquids, so are molasses, tar and wood pulp-obviously in a fluid form i.e. pulp mixed with water.

14. In view of these definitions, the findings of the Collector (Appeals) holding that sewage being essentially muddy water and hence is a liquid is in order.

6. In view of the above discussion, on the ratio of the Tribunal's decision quoted above, the appeals are rejected.