

Collector of Central Excise Vs. Voltas Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-20-1995

Reported in : (1996)(81)ELT645TriDel

Appellant : Collector of Central Excise

Respondent : Voltas Ltd.

Judgement :

1. This is an appeal filed by the department against the order-in-appeal, dated 30-9-1985 passed by the Collector of Central Excise (Appeals), Bombay. The respondents are engaged in the manufacture of water coolers falling under Tariff Item No. 29A(1) which were exempted under Notification No. 87/82, dated 28-2-1982. It was charged that the respondents had manufactured cabinets meant for the coolers but they had not filed any classification list or price list in respect of the cabinets and had not paid any duty on the same before they were used captively in the manufacture of water coolers. Show cause notice was issued accordingly and the same was duly answered by the party denying the charges stating that no items answering to the description 'Cabinets' comes into existence in the course of manufacture of water coolers. They described the process of manufacture of water coolers in which the rectangular casings housing the water cooler assembled comes into existence and such casing cannot be considered as cabinet. The Asstt. Collector who adjudicated the proceedings observed that the purpose of a cabinet for refrigerator and that of rectangular outer casing of water coolers is very nearly the same, namely insulating the inner and enclosed portion and machinery system

from the outside dust, air and temperature. He held therefore that the casing of water cooler is nothing but a cabinet. On appeal filed by the party, the Collector (Appeals) accepted the contentions of the party and held that the casing of the water cooler is not a cabinet relying upon the ISI specification for refrigerators ISI1474-1959 as well as referring to the decision of the Tribunal in the case of Moosa Haji Patrawala, Bombay & M/s. Voltas Ltd. v. Collector of Central Excise, Bombay as per order No. 191-192/85B, dated 13-2-1985 reported in 1985 (21) E.L.T. 485. The finding portion in para 6 of the order is as under : I have considered the appeal memorandum and the submissions made during the course of the hearing carefully. The point for decision is whether the casing of the water coolers is a cabinet or not. The appellant have relied on the decision of the CEGAT in holding that the outer wrapper of the air conditioner is not a 'cabinet'. The CEGAT have also held that the department is not precluded from adducing evidence at a late date to show that the wrapper could be called a cabinet. Secondly the term cabinet has not been defined in the notification/Tariff. Reliance was placed on ISI specification of Refrigerator wherein the term cabinet figures 1474 :1959. In the ordinary course, the term cabinet is understood as "A piece of furniture consisting of a Chest or a box with drawers and doors, a cupboard with shelves & doors, a console especially one which houses a TV or a radio receiving set" Lexican Websters Dictionary. The water cooler is protected by the casing. The ISI specification for self contained drinking water coolers refer to the casing as panels.

It is not called a cabinet anywhere. It is known as a Cabinet in normal trade parlance. These are not sold as such. They do not come into existence separately. The panels and the machinery are installed in a sequence simultaneously. A base plate with vertical slotted angles are first fixed and thereafter the compressor and others are mounted in the base plate. After the installation another plate is fixed which gives support to the water containers which is placed from the top. The front plate, top portion of which is generally tapering. It is at this point that the faucets are fixed.

No doubt the panel encase the machinery in full but it called a cabinet. The Asstt. Collector has agreed that it is not known as a cabinet. I am inclined to depend on

the ISI specification for Refrigerators ISI1474-1959 for determining what a cabinet is. I therefore hold that the term cabinet is used more with respect to Refrigerating appliances and also on the decision of the CEGAT in the case Moosa Patrawala & Voltas Ltd. v. Collector of Central Excise Bombay in holding that the casing in question is not a cabinet. The appeal is admitted." 2. Shri K.K. Jha, Id. SDR appearing for the revenue justified the order of the Asstt. Collector in treating the item in question as cabinet since the purpose of a cabinet for refrigerator and that of a rectangular outer casing of water cooler is the same. He submitted that ISI specification is not the guiding factor to decide the issue with reference to the product since ISI specification is mainly concerned with the quality of the product.

3. Shri A.N. Haksar, Id. Sr. Advocate while justifying the Order-in-ap-peal passed by the Collector (Appeals) submitted that department relied upon Notification No. 80/62, dated 24.4.1962 in deciding the product in question as cabinet without bringing any evidence to show that item can be called as cabinet. Referring to the para 7 of the order passed by the Asstt. Collector, he submitted that the Asstt. Collector arrived at the conclusion that the casing of water cooler is nothing but a cabinet but not substantiated with supported evidence. On the other hand he himself has given a clear finding that it is not known as such in trade and commercial parlance. Since the term 'cabinet' has not been defined in the Notification, the burden lies on the department to prove how the item can be understood as cabinet and in the absence of any evidence it cannot be called as cabinet and furthermore there was a positive finding by the Asstt.

Collector that the item in question is not known as cabinet in trade and commercial parlance. ISI specifications though mainly concern with the quality, as urged by the other side, mentions cabinets with reference to refrigerators and mentions various parts with reference to water coolers but not even whisper with reference to the cabinet of water cooler. He submitted that it was clearly held in the case of Moosa Hap Patrawala cited supra that outer wrapper or outer casing is not a cabinet for air-conditioner and hence not liable to duty under Item 29A(3) of the Central Excise Tariff Act with reference to Notification No. 80/62-C.E., dated 24-4-1962 observing that the department has not placed any material on record and failed to prove that the article in question in commercial and trade parlance is a cabinet.

Further it was observed that the article is not proved to be a cabinet is for want of adducing evidence by the department and this would not preclude the department from contending for a subsequent period that the article is a cabinet should they be able to substantiate its contention with requisite evidence. Since the department has failed to substantiate the contention with the requisite evidence, the appeal is liable to be dismissed.

4. We have carefully considered the submissions. We find that Notification No. 80/62 exempts all parts of refrigerators and air conditioning parts from duty except the items specified in the notification. One of the parts specified is the cabinet. Casing of the water cooler as such is not mentioned in the notification. The term 'cabinet' has not been defined either in the notification or in the tariff as it was rightly argued on behalf of the respondents. Hence it is for the department to show that casing of water cooler is a cabinet by adducing sufficient evidence. In fact the Tribunal has held in the aforesaid case that department is not precluded from producing the evidence at a later date to show that wrapper or outer casing is a cabinet. Since such evidence is not forthcoming in this case and in view of the positive finding given by the Asstt. Collector that the item as such is not known as cabinet in the trade and commercial parlance, the Collector (Appeals) was right in holding that item in question is not a cabinet following the earlier decision of the Tribunal. Since we do not find infirmity in the impugned order in holding that the item is not a cabinet for want of evidence, we uphold the impugned order and accordingly the appeal filed by the department is hereby dismissed.

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