

Collector of Central Excise Vs. Pace Dry Air Corpn.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-15-1996

Reported in : (1996)(83)ELT447TriDel

Appellant : Collector of Central Excise

Respondent : Pace Dry Air Corpn.

Judgement :

1. This is an appeal filed by the Revenue being aggrieved with the Order-in-Appeal dated 10-9-1985 passed by the Collector of Central Excise (Appeals), Bombay.

2. The matter relates to the classification of the product 'Air Dryer' for industrial use whether under Item 29A(i) or under Item No. 68 of the erstwhile First Schedule of the Central Excise Tariff. The Collector (Appeals) had held it to be classifiable under Item 68.

Revenue had come in appeal on the ground that the product is a Refrigerating appliances and was correctly classifiable under Item 29A(i).

3. We have heard Shri Gopal Prasad, learned Advocate for the respondents and Shri G.D. Sharma, learned JDR for the appellant/Revenue.

4. Shri G.D. Sharma, learned JDR referred to the product's literature and submitted that product works on refrigeration system. It chills the air and manufacturer had also referred it as Air refrigerated dryer.

Referring to the order passed by the Collector of Central Excise (Appeals), he mentioned that learned Collector had gone wrong on the assumption that product was not ready assembled unit. He stated that it was a ready assembled unit and could be vised as such for the purpose of refrigerating the compressed gas.

5. Shri Gopal Prasad, learned Advocate replied that the main purpose of the product was to take away the moisture from the compressed air for a particular purpose where moisture free air was required for the industrial use. It cannot work on room temperature and only compressed air can go in it. By this process moisture is taken out of such compressed air and compressed air is without moisture. The product has only industrial application and is not known commercially as Refrigerating appliances. Referring to the scope of Item 29A(i) he submitted that only such product as Ice Makers, Bottle coolers, display cabinets and water coolers were required to be covered by the expression 'refrigerating appliances'. The product in question was not akin to any of them. He referred to the Bombay High Court decision in the case of Central Camera Ltd. v. Union of India, 1981 (8) E.L.T. 344 (Bom.), wherein Bombay High Court had held X-ray processing unit even if have a refrigeration facility will not be a refrigerating appliances for the purpose of Item No. 29A of the Tariff.

6. We have carefully considered the matter. We find that product works only on the compressed air and gas. It will take only compressed gas and compressed air and not air as a ordinary compressed pressure. From the product's literature, it is also seen that it is a wet air which alone is filled causing moisture vapour to condense, the vapour is literally squeezed out of the air. The cooled air and condensed water are channeled directly into a low velocity chamber where the water is separated from the air stream and discharged through an automatic drain trap. The air then returns to the shell of the air-to-air heat exchanger for reheating before it is supplied to the main air system.

The product works on two systems - one to carry compressed air and other to circulate the refrigerant. Both the systems are inter-dependent.

7. Learned Collector of Central Excise (Appeals) had examined the matter in details and had come to a decision that during the relevant time the product was

rightly classifiable under Item No. 68. He has referred to the Bombay High Court decision in the case of Central Camera Ltd. v. Union of India - 1981 (8) E.L.T. 344 (Bom.) and had observed that in the present case air dryer removes the moisture from the compressed air. It is an accessory for the compressed air lines to give a final and better results to the final product as well as saving the life of instruments and tools by avoiding rusting and short circuit. Learned Advocate had also referred to the technical opinion obtained by the respondents. Although this material was not before the lower authorities we find that definition of refrigerate has been taken from a published literature New Collins Concise English dictionary which has defined the word Refrigerate as under : "To make or become frozen or cold especially for preservative purposes i.e. Chill or Freeze." Without going into other aspect of this expert opinion, we agree to the extent that product in question does not serve any preservative purposes. The learned Collector (Appeals) has also referred that product was not a ready assembled unit. We do not agree with him on this account as we find that the product is a packaged self contained unit but it will not affect his final conclusion that goods in question were not classifiable under Item No. 29A(i) of the Tariff.

8. The Bombay High Court's decision relied upon by the learned Collector of Central Excise (Appeals) has already been referred to above. Bombay High Court has gone mainly of the basic character of the unit under consideration before them who held that X-ray unit-cooling unit was a refrigerating appliances. Following the above decision and taking note of the feature of product under consideration and the observations of the learned Collector of Central Excise (Appeals), we find no ground to disagree with the conclusion drawn by the learned Collector of Central Excise (Appeals). In the circumstances, we find no merits in the appeal filed by the Revenue and the same is rejected.

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