

SUPREME COURT OF INDIA

Commissioner of C. Ex., Madras

Vs.

Systems and Components Pvt. Ltd.

(S.N. Variava and H.K.Sema JJ.)

12.02.2004

ORDER

1. These appeals are against an order of the Customs, Excise and Gold (Control) Appellate Tribunal (in short "CEGAT"), dated 3rd April, 1997. The question for consideration is regarding classification of (i) Receivers 7309 (ii) Surge Drum 7309 (iii) Flash Vessel 7309 (iv) Oil Receiver 7309 (v) Drain Pot 7309 and (vi) Base frames, which are used by the Respondents in manufacture of Water Chilling Plant. The Appellants contend that these are all parts of the Water Chilling Plant and therefore they are covered by Tariff Item No. 84.19 which reads as follows:

Heading No. Sub-Heading No. Description of Goods Rate of duty (1) (2) (3) (4)

8419 Machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vaporising, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non electric.

8419.10 All goods other than parts 16%

8419.90 Parts 16%

2. The Respondents sought to classify them under Tariff Item No. 73.09 which reads as follows:

Heading No. Sub-Heading No. Description of Goods Rate of duty (1) (2) (3) (4)

73.09 7309.00 Reservoirs, tanks, vats and similar containers for any material (other than compressed or liquefied gas), of iron or steel, of a capacity exceeding 300 L, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment 16%

3. The Assistant Collector noted that it was an admitted position that these were all parts of the Water Chilling Plant manufactured by the Respondents and that they had no independent use on their own. The Assistant Collector thus held that they were classifiable under Tariff Item No. 84.19.

4. The Collector (Appeals) relied upon a Circular issued by the Board of Central Excise dated 25th September, 1986 and held that Receivers, Surge Drums and Flash Vessels were classifiable under Tariff Item No. 73.11 and the Drain Pot under 73.10. It was held that the oil separator would be classifiable under 84.79 and the Base Frame under 7308.90.

5. The Appeal filed by the Department has been disposed of by the Tribunal by holding that the Department has not proved that these parts were specifically designed for manufacture of Water Chilling Plant in question. The Tribunal has noted the Technical details supplied by the Respondents and the letter of the Respondents dated 30th November, 1993 giving details of how these parts are used in the Chilling Plant. The Tribunal has still strangely held that this by itself is not sufficient to show that they are specifically designed for the purpose of assembling the Chilling Plant. We are unable to understand this reasoning. Once it is an admitted position by the party itself, that these are parts of a Chilling Plant and the concerned party does not even dispute that they have no independent use there is no need for the Department to prove the same. It is a basic and settled law that what is admitted need not be proved.

6. The Judgment of the Tribunal thus needs to be set aside. It was however urged, on behalf of the Respondents that there are circulars of the Board which should really have been considered by the Tribunal.

7. We, therefore, set aside the impugned Judgment and remit the matter back to the Tribunal for deciding the same on merits on the basis of above admitted position. The Appeals are allowed accordingly. There will be no order as to costs.