SUPREME COURT OF INDIA

Marsons Fan Industries

Vs.

Commissioner of Central Excise

C.A.No.1925 of 2002

(Ashok Bhan,J.Dalveer Bhandari and P.Sathasivam,JJ.)

23.01.2008

ORDER

1. The appellant is a small scale industry. It commenced manufacturing electric fans falling under the erstwhile Tariff Item No.33 prior to coming into force of Central Excise Tariff Act, 1985, after obtaining central excise licence. Rotors and stators falling under Tariff Item 30D which are essential components required for the manufacture of electric fans, were also manufactured by the appellant and captively used. The appellant, from time to time, also received orders for doing diverse specific specialised processing work on job work basis on customers' raw materials like winding, die casting, coil setting etc. which did not transform the customers' raw materials into rotors and stators as commercially known and the customers undertook various further processes in their own factories to manufacture rotors and stators and used the same in the manufacture of their fans. For the period January 1983 to March 1984, the Collector vide its order dated 31st May 1988 held that the rotors and stators were complete and were manufactured by the appellant and C.A.No.1925/02 .... (Contd.)- 2 - thus exigible to the levy of excise duty. This order was confirmed by the Tribunal by the impugned order dated 27th April 2001. Order of the Tribunal as well as that of the Collector are under challenge in this appeal.

2. Mr. Joseph Vellapally, learned senior counsel appearing for the appellant has brought to our notice that in a case pertaining to earlier period from February 1982 to December 1982 of the assessee, the Collector (very same officer) in Order (Original) No.61(30-D)87- Collr. 57/89 dated 21st July 1989 took the view that rotors and stators were incomplete and were unfinished goods not known in the market as stators and rotors. He also states that the subsequent order dated 21st July 1989 was brought to the notice of the Tribunal but the Tribunal did not take note of it. In support of his assertion, learned senior counsel has filed an affidavit of the counsel who had appeared for the assessee before the Tribunal. He further states that the Department has accepted the subsequent decision dated 21st July 1989 for the period February 1982 to December 1982. He submits that in view of the fact that the Department has accepted the subsequent decision dated 21st July 1989 in which it has been held that the rotors and stators in the form in which they are cleared from the appellant's

factory are not finished goods and, therefore, not exigible to the levy of excise duty, the present appeal be accepted and the impugned order be set aside.

3. Learned senior counsel for the Department, after taking instructions, very fairly submits that the Department has accepted the decision dated 21st July 1989 and the same has attained finality.

4. Keeping in view the fact that the Department has accepted the decision dated 21st July 1989 pertaining to the assessee itself on the similar goods, we accept this appeal and set aside the order of the Tribunal and hold that the rotors and stators which were cleared by the appellant were not finished goods and were, therefore, not exigible to the levy of excise duty for the relevant period.

5. For the reasons stated above, this appeal is allowed.