

CASE NO.:
Appeal (civil) 8066-8068 of 2001

PETITIONER:
Fedders Lloyd Corportion Ltd

RESPONDENT:
Commissioner of Central Excise, Mumbai

DATE OF JUDGMENT: 03/12/2007

BENCH:
ASHOK BHAN & V.S. SIRPURKAR

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO(S). 8066-8068 of 2001

BHAN, J.

1. The present appeals under Section 35L(b) of the Central Excise Act, 1944 (for short "the Act") have been filed by the assessee against the impugned final Order nos. 242-244/2001-B dated 1st May, 2001 in appeal Nos. E/761-763/98-B passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (for short "the Tribunal"), rejecting the appeals filed by the appellant on merits and limitation.

2. The issue before the Tribunal was, whether the appellant was manufacturing split air-conditioners classifiable under Tariff Heading 84.15 of the Central Excise Tariff Act.

3. The appellant, Fedders Lloyd Corporation Ltd., cleared condensing units from their unit at Kalkaji, New Delhi to Mumbai, where the appellant purchased cooling units from local manufacturers fabricated on order with motors, etc., supplied by the appellant. After carrying out certain tests for quality by filling gas, affixing the brand name 'Fedders Lloyd', the complete unit was cleared along with pipe kits, electrical cord, remote control, etc., to various customers from their warehouse/godown at Mumbai. The invoices were raised by the appellant's Mumbai office for supply of split air-conditioners.

4. A show cause notice dated 3rd April, 1996 was issued to the appellant, alleging that 412 nos. split air-conditioners were clandestinely removed by the appellant without payment of duty, involving evasion of central excise duty to the tune of Rs.56,14,293/- during the period October 1991 to April 1996. It was also stated that the department was unaware of the fact that the appellant was manufacturing split air-conditioners.

5. The demand raised in the show cause notice was confirmed in the order-in-original. Appeals filed by the appellant before the Tribunal were dismissed. Aggrieved against the same, the present appeals have been filed.

6. Counsels for the parties have been heard at length.

7. Records reveal that during the course of investigation, statements of Shri Shivshankar Upadhyay, partner of New Gold Air Conditioners, who had supplied the cooling units to the Mumbai Branch of the appellant, was recorded wherein he confirmed that they had filed a declaration with the excise authorities that they were manufacturing sheet metal bodies of air-conditioners. He also confirmed that the electric motors to be fitted with cooling units were supplied by the appellant. Statement of Shri R.P. Gupta, Commercial Manager of the appellant, was also recorded wherein he had stated that the appellant had supplied electrical motors to be fitted with the cooling units to the local manufacturers so that check on the quality can be kept. These cooling units were received by them at their godown at Kunjurmarg from where complete units of split air-conditioners were supplied to various customers. That the complete units of split air-conditioners were delivered after putting together condensing units received from New Delhi and cooling units procured locally along with other associates and that their invoice was raised from Mumbai administrative office. Shri K.A. Bhatia, Project Manager of Air Serco Pvt. Ltd., whose statement was also recorded, stated that after receiving the air-conditioners complete in all respect along with necessary accessories, were supplied by the appellant to Air Serco Pvt. Ltd., which is a sister concern of the appellant and undertakes the job of installation and servicing of air-conditioners at Mumbai. Statement of Shri K. Vijayan, Commercial Executive of the appellant, was also recorded wherein he stated, inter alia, that he was looking after the finished stores of the appellant at Devidayal Compound, Kanjurmarg, situated in the premises of M/s. Air Serco Pvt. Ltd. and that his job was to look after the stock of the finished goods received in the godown from New Delhi and from local manufacturers such as New Gold Air-conditioners, and to maintain relevant records. He further stated that at Kanjurmarg godown, before delivery of the split air-conditioners, gas is filled in the condenser for carrying out certain checks for leakage of gas.

8. From the statements of S/Shri Shivshankar Upadhyay, R.P. Gupta, K. A. Bhatia and K. Vijayan, it is evident that the appellant's Mumbai Branch received condensing units cleared from their manufacturing unit at New Delhi on payment of appropriate central excise duty as parts of air-conditioners and procured cooling units manufactured locally at Mumbai. At their workshop-cum-godown, certain checks for quality were conducted by filling the gas and the brand name "Fedders Lloyd" was affixed on the cooling units and, thereafter, these units were cleared along with pipe kits, electrical cord, remote control etc. to various customers and the same was installed by the appellant's sister concern, M/s. Air Serco Pvt. Ltd., on behalf of the appellant. The invoice was raised by the appellant's Mumbai office for supply of split air-conditioners. No excise duty was paid on such split air-conditioners as they were supplied from Mumbai to their various customers in Gujarat and Goa. The statements of these persons clearly show that a complete split air-conditioner came

into existence at Kanjumarg Workshop of the appellant.

9. We do not find any substance in the submissions advanced on behalf of the appellant that no change in the name, character and use of the product or transformation of the raw material into finished product came into existence; the cooling units or condensing units by themselves cannot function as air-conditioners. They have to be joined together with pipe kits, electrical cord and remote control, etc. to function as a complete air conditioner unit. This process was carried at the factory-cum-godown of the appellant at Kanjumarg.

10. Section 2(f) of the Central Excise Act defines "manufacture" as:

"(f) "manufacture" includes any process, --

(i) incidental or ancillary to the completion of a manufactured product; and

(ii) which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture"

11. Clause (f) gives an inclusive definition of the term "manufacture". According to the dictionary, the term "manufacture" means a process which results in an alteration or change in the goods which are subjected to the process of manufacturing leading to the production of a commercially new article. As to what constitutes manufacture would depend upon the facts of each case. As noticed earlier, condensing units were manufactured by the appellant at its factory at New Delhi and the cooling units were procured from the local market for which the electrical motors were supplied by the appellant. Neither the condensing unit nor the cooling unit by itself is a complete air conditioner. It is only when these two, i.e. condensing unit and cooling units are put together the complete unit of air conditioner fit for use came into existence at the Kanjumarg workshop. Air conditioner is a commercially new article than either the condensing unit or the cooling unit.

12. For the reasons state above, the contention of the appellant that there is no manufacture at their Bombay Unit stands belied and cannot be accepted.

13. The Tribunal in its order has relied upon Rule 2(a) of the Rules of Interpretation. Counsel for the appellant has contended that the said rule is not applicable. In our view, reference to the applicability of the rule 2(a) is not necessary and the matter can be decided without reference to that rule. The issue of clearing complete units of air-conditioners from Bombay Branch of the appellant was evident from the depositions of the appellant's own employees and the partners of New Gold Air-conditioners who had supplied the cooling units

and the invoice raised by the appellant.

14. For the foregoing reasons, we have no reason to differ with the concurrent findings on facts recorded by the authorities below that the appellant was indeed manufacturing the split air-conditioners, as stated in the show cause notice.

15. The appeals are dismissed, accordingly, with no order as to costs.

JUDIS