Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12175 of 2019

(Arising out of OIO-DMN-EXCUS-000-COM-11-14-19-20 dated 22/06/2019 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Seagull Cooling Pvt Ltd **.........Appellant**
S.No. 202/1, Gala No. 6 & 7, Dadra Industrial Estate, Opp. Dadra Check Post
SILVASSA, DADRA AND NAGAR HAVELI

VERSUS

C.C.E. & S.T.-Daman **.........Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

WITH

i. **Excise Appeal No. 12176 of 2019 (Seagull Cooling Pvt Ltd)**
ii. **Excise Appeal No. 12177 of 2019 (Seagull Cooling Pvt Ltd)**
iii. **Excise Appeal No. 12178 of 2019 (Seagull Cooling Pvt Ltd)**

(Arising out of OIO-DMN-EXCUS-000-COM-11-14-19-20 dated 22/06/2019 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

(Arising out of OIO-DMN-EXCUS-000-COM-11-14-19-20 dated 22/06/2019 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

(Arising out of OIO-DMN-EXCUS-000-COM-11-14-19-20 dated 22/06/2019 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

APPEARANCE:
Shri P K Shetty, Advocate for the Appellant
Shri Sanjiv Kinker, Superintendent (Authorised representative) for the Respondent

CORAM: **HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 12604-12607 /2021

DATE OF HEARING: 12.08.2021
DATE OF DECISION: 13.12.2021

RAMESH NAIR

The brief facts of the case are that the appellants are engaged in the manufacturing of excisable goods i.e. Air Conditioners and parts thereof falling under Chapter 8415 of Central Excise Tariff Act, 1985. At the relevant time there is a levy of special excise duty on the complete window air conditioner and complete split air conditioner. However, there was exemption from payment of special excise duty in respect of parts of air conditioner. The case of the department is that the goods which have been cleared by the appellant are having essential characteristic of complete air conditioner therefore, is liable to special excise duty whereas, the contention of the appellant is that the goods cleared by them are parts and does not have essential characteristic of air conditions and hence the special excise duty is not liable to be paid.

1.1 In the first round, the adjudicating authority had confirmed the demand vide Order-In-Original No.10-13/DEM/VAPI/2005 dated 30.08.2005 which was challenged by the appellant under Appeal No.E/3731 of 2005, the tribunal remanded the matter vide Final Order No.A/1426/WZB/AHD/2009 dated 3.7.2009 for a fresh adjudication, in view of the earlier order of this tribunal bearing No. A/1449 to 1451/WZB/06-CIII (EB) dated 3.8.06 in the appellant's own case. After almost 10 years of remand the adjudicating authority again confirmed the demand vide Order-In-Original dated 22.6.2019 against which the present appeals filed by the appellant.

02. Shri P K Shetty, learned counsel appearing on behalf of the appellants submits that the issue is squarely covered by this tribunal decision in the appellant's own case which was passed by relying upon the board's circular dated 25.9.2002 therefore, the issue is no longer *res-integra*. The learned Principal Commissioner ought to have dropped the demand as the legal issue involved in the present case has been settled in favour of the appellant in tribunal's Order No. A/1449 to 1451/WZB/06-CIII (EB) dated 3.8.06. As regard facts of this cases he submitted a chart showing that the goods cleared under the invoice does not have essential characteristic of the complete air conditioner is either one or more items mentioned in the board's circular are absent therefore, the goods cleared by the appellants are parts of air conditioner hence the special excise duty is not leviable.

03. Shri Sanjiv Kinker, learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He also filed a parawise response to the point raised in appeal memo by the appellant and also relied upon the following judgments:-

- HINDUSTAN LEVER LTD Vs. COLLECTOR OF CENTRAL EXCISE, BOMBAY-1998 (103) E.L.T. 492 (Tribunal)
- GIANI RAM FOAM INDUSTRIES vs. COMMISSIONER OF C.EX., DELHI-I-2003 (152) E.L.T. 317 (Tribunal)

- BIDAR SAHAKARI SAKKARE KARKHANE LTD. Vs. COMMR. OF C.EX., MANGALORE- 2008 (224) E.L.T. 90 (Tri.-Bang.)
- FEDDERS LLOYD CORPORATION LTD. Vs. COMMISSIONER OF C.EX., MUMBAI- 2008 (221) E.L.T. 3 (S.C.)
- FEDDERS LLOYD CORPORATION LTD. Vs. COMMISSIONER OF C.EX., MUMBAI-II- 2001 (135) E.L.T. 1331 (Tri.-Del.)

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the issue in the appellant's own case has been settled vide this tribunal's Order A/1449 to 1451/WZB/06-CIII (EB) dated 3.8.06, the said decision was given considering the board circular dated 25.9.2002. As per the board circular, the essential characteristic of an air conditioner machine would be achieved if an assembly have all the following components:

(i) Evaporator (cooling) coil

(ii) Condenser coil

(iii) Motor

(iv) Fan or blower for circulating the air

(v) Compressor

(vi) Capillary line (expansion valve)

4.1 As per the above board circular an assembly can be considered as a complete air conditioner only if all the above items are assembled in the said assembly. The learned counsel submitted charts which are scanned below:-

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SHOW-CAUSE NOTICES NO. V(CH.84)3-125/DEM/2003 DATE :- 22.01.2004

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SR. NO.	CATEGORY OF CLEARENCE AS MENTION IN THE S.C. NOTICE	PERIOD	ENENTS AS PER BOARD CIRCULAR NO.666/57/2002-CX. DATE:- 25.09.2002 ITEM 1		AMOUNT OF DUTY DEMAND.	INVOICE NO.
			USED	NOT USED		
1	OUTDOOR CONDENSING UNIT WITH COMPRESSOR	01.03.2003 TO 31.10.2003	5. COMPRESSOR	1. EVAPORATOR(COOLING) COIL 2. CONDENSOR COIL 3. MOTOR 4. FAN OR BLOWER FOR CIRCULATING THE AIR 6. CAPILLARY LINE (EXPANSION VALVE)	1793	2,3,8,21,28,29,33,35,68,90,98,104,105,115
4	OUTDOOR CONDENSING UNIT WITH SHEET METAL	01.03.2003 TO 31.10.2003	5. COMPRESSOR	1. EVAPORATOR(COOLING) COIL 2. CONDENSOR COIL 3. MOTOR 4. FAN OR BLOWER FOR CIRCULATING THE AIR 6. CAPILLARY LINE (EXPANSION VALVE)	930664	526,540,545,553,555,556,576,577,605, 116,117,128.,133,135,136,141,142,149,151 153,157,159,161.,164,166,168,169,173,176 182,187,190,197,199.,207,209,210,211,223, 226,227,232.,236,244,298,300,301,319,321 322,323,325,334.,339,342,343,346.,347,349 350,351,369.,377,440,450,492,493,494,497
2	SHEET METAL KIT PARTS WITH CONDENSOR / SLIM TOWER/ MULTI CONDENSING UNIT WITH SHEET METAL ETC.	01.03.2003 TO 31.10.2003	1. EVAPORATOR(COOLING) COIL 2. CONDENSOR COIL 3. MOTOR 4. FAN OR BLOWER FOR CIRCULATING THE AIR	5. COMPRESSOR 6. CAPILLARY LINE (EXPANSION VALVE)	96911	11,14,71,172,192,238,275,279,297,380,383 401,437,449.,501,550,551,587,647,656,657
3	COIL SHEET WITH HEADER	01.03.2003 TO 31.10.2003	1. EVAPORATOR(COOLING) COIL 2. CONDENSOR COIL	3. MOTOR 4. FAN OR BLOWER FOR CIRCULATING THE AIR 5. COMPRESSOR 6. CAPILLARY LINE (EXPANSION VALVE)	499515	4,9,22,24,25,40,52,73,97,102,123,127,156 180,194,211,225,230.,265,267,271,274,286 295,308,330,354,358.,365,370,371,372,378 387,402,427,448,454.,462,481,486,497,559 573,602,628,
				TOTAL	1528883	

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SHOW-CAUSE NOTICES NO. V(CH.84)3-9/DEM/2003 DATE:-16.01.2003

SR. NO.	CATEGORY OF CLEARENCE AS MENTION IN THE S.C. NOTICE	PERIOD	ENTS AS PER BOARD CIRCULAR NO.666/57/2002-CX. DATE:- 25.09.2002 ITEM USED	NOT USED	AMOUNT OF DUTY DEMAND.
1	OUTDOOR CONDENSING UNIT WITH COMPRESSOR	01.01.2002 TO 31.08.2002	5. COMPRESSOR	1. EVAPORATOR(COOLING) COIL 2. CONDENSOR COIL 3. MOTOR 4. FAN OR BLOWER FOR CIRCULATING THE AIR 6. CAPILLARY LINE (EXPANSION VALVE)	7732122
2	FAN COIL SPLIT UNIT/ FLOOR STANDING INDOOR UNIT/FANCOIL DUCTABLE UNIT/ SLIM TOWER	01.01.2002 TO 31.08.2002	1. EVAPORATOR(COOLING) COIL 3. MOTOR 4. FAN OR BLOWER FOR CIRCULATING THE AIR	2. CONDENSOR COIL 5. COMPRESSOR 6. CAPILLARY LINE (EXPANSION VALVE)	153478
3	SHEETMETAL KITS WITH COMPRESSOR	01.01.2002 TO 31.08.2002	5. COMPRESSOR	1. EVAPORATOR(COOLING) COIL 2. CONDENSOR COIL 3. MOTOR 4. FAN OR BLOWER FOR CIRCULATING THE AIR 6. CAPILLARY LINE (EXPANSION VALVE)	454906
4	MULTI CONDENSING UNIT WITH COMPRESSOR	01.01.2002 TO 31.08.2002	5. COMPRESSOR	1. EVAPORATOR(COOLING) COIL 2. CONDENSOR COIL 3. MOTOR 4. FAN OR BLOWER FOR CIRCULATING THE AIR 6. CAPILLARY LINE (EXPANSION VALVE)	207673
				TOTAL	8548179

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SHOW-CAUSE NOTICES NO. SLV-V/SCN-SEAGULL/2003-04 DATE:- 19.08.2003

SR. NO.	CATEGORY OF CLEARENCE AS MENTION IN THE S.C. NOTICE	PERIOD	COMPENENTS AS PER BOARD CIRCULAR NO.666/57/2002-CX. DATE:- 25.09.2002 ITEM 1 TO 6. USED	NOT USED	AMOUNT OF DUTY DEMAND.	INVOICE NO.
1	OUTDOOR CONDENSING UNIT WITH COMPRESSOR	01.09.2002 TO 28.02.2003	5. COMPRESSOR	1. EVAPORATOR(COOLING) COIL 2. CONDENSOR COIL 3. MOTOR 4. FAN OR BLOWER FOR CIRCULATING THE AIR 6. CAPILLARY LINE (EXPANSION VALVE)	3385891	1270,1274,1282.,1292,1293,1357 1358,1359,1372,1373.,1379,1405 1406,1407,1408.,1409,1410,1436 1444,1445,1447.,1449.,1450,1482 1510,1511.,1512,1513,1514,1596 1601,1618,1630.,1632,1651,1655, 1662,1664,1674.,1676,1678,1786, 1797,1799.,1806,1819,1822,1839, 1864,1889.,1891,1903,1904,1961 1962,1965.,2032,2033,2034,2035 2039,2040.,2044,2051,2052,2053 2056,2098.,
5	OUTDOOR CONDENSING UNIT WITH SHEET METAL	01.09.2002. TO 28.02.2003	5. COMPRESSOR	1. EVAPORATOR(COOLING) COIL 2. CONDENSOR COIL 3. MOTOR 4. FAN OR BLOWER FOR CIRCULATING THE AIR 6. CAPILLARY LINE (EXPANSION VALVE)	1218623	
2	SHEET METAL KITS WITH / SLIM TOWER INDOOR UNIT/ WINDOW A.C. ETC.	01.09.2002 TO 28.02.2003	1. EVAPORATOR(COOLING) COIL 2. CONDENSOR COIL 3. MOTOR 4. FAN OR BLOWER FOR CIRCULATING THE AIR	5..COMPRESSOR 6. CAPILLARY LINE (EXPANSION VALVE)	91590	1257,1328,1558.,1578,1783,1784 1804,2074.,
3	OUTDOOR CONDENSING UNIT WITH CONDENSER	01.09.2002 TO 28.02.2003	2. CONDENSOR COIL 3. MOTOR 4. FAN OR BLOWER FOR CIRCULATING THE AIR	1. EVAPORATOR(COOLING) COIL 5. COMPRESSOR 6. CAPILLARY LINE (EXPANSION VALVE)	163405	1261,1275.,1276,1280,1284,1285 1288,1297,1336.,1341,1342,1354 1360.,1385.,1387,1391,1399,1424 1427,1464,1466.,1468,1481,1483 1527,1532.,1546,1560,1566,1567 1577,1606.,1626,1635,1661,1669, 1671,1687.,1720,1755,1760,1771, 1774,1779.,1780,1788,1790,1794 1800,1801,1803.,1841,18441868, 1884,1868.,1920,2017,2065,2072
4	COILSET WITH HEADER	01.09.2002 TO 28.02.2003	1. EVAPORATOR(COOLING) COIL 2. CONDENSOR COIL	3. MOTOR 4. FAN OR BLOWER FOR CIRCULATING THE AIR 5. COMPRESSOR 6. CAPILLARY LINE (EXPANSION VALVE)	499515	1260,1266,1286.,1353,1383,1411 1433,1497.,1538,1548,1579,1582 1599,1619.,1625,1666,1673,1747 1793,1805.,1818,1847,1880,1887 1913,1921.,1958,1959,2048,2060 2066,2070.,2095,2096,
				TOTAL	5359024	

From the above charts, it is clear that the assembly which were cleared by the appellant were not contained either one or more items specified in the board circular. Therefore, if this is correct then the goods cleared by the appellant do not have essential characteristic of complete air conditioner therefore, the same shall not be liable for levy of special excise duty. On these facts the tribunal has already decided the matter in favour of the appellant.

4.2 On going through the impugned order, we find that the learned adjudicating authority has not discussed about the nature of the assembly cleared by the appellant that whether the assemblies have contained all the six items mentioned in the board circular or otherwise which was claimed by the appellant therefore, the matter needs to be reconsidered only on the point that whether the goods cleared by the appellant contains all the six items mentioned in the board circular or otherwise. If it is found that if one or more items specified in the board circular is absent in the assembly supplied by the appellant, the same shall not be considered as complete air conditioner whereas, the goods shall be considered as parts of air conditioner accordingly, there shall not be any levy of special excise duty.

4.3 With this observation, we set aside the impugned order and remand the matter to the adjudicating authority for passing afresh order. Since the matter is of very old period of 2003, the denovo adjudication process may be completed within a period three months from the date of this order.

05. Appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 13.12.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul