CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/Decision: 25.07.2017

Appeal No. E/52766/2014 EX [DB]
[Arising out of the Order in Appeal No. IND-CEX-000-APP-42-2014 dated 29/01/2014 Passed by The Commissioner (Appeals), Central Excise, Indore]

M/s CCE,Indore … Appellant

Vs.

Darling Pumps Pvt Ltd. … Respondent

Appearance:
Present Mr. M.R. Sharma, for the appellant
Present Shri M. Saharan, Advocate for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble Mr.Ashok K.Arya, Member (Technical)

FINAL ORDER No. 55645/2017

Per:Justice Dr. Satish Chandra

1. The present appeal is filed by the department against the Order in Appeal No. 42/2014 dated 29/01/2014. The period of dispute is from 2006-2007.
2. During the period under consideration, the respondent was engaged in the manufacture of Power Driven Pumps which were designed for handling of water falling under Chapter-sub-heading 8137010 along with other types of Pumps falling under Chapter Heading 8413 of the Central Excise Tariff Act, 1985. The appellant was enjoying concessional rate of duty.
3. At the instance of the audit, it was found that the respondent was selling pumps under the name of Unclog Pumps, Enviro Pumps and Sump Pumps on payment of concessional rate of Central Excise Duty. On going through the literature, it was observed that the pumps have been designed to handle raw

sewage, slurry drainage, industrial waste etc; so the department denied the exemption of the duty. Show Cause Notice was issued but the Original Adjudicating Authority dropped the demand. Being aggrieved the Department filed appeal before the Commissioner (Appeal), who also dropped the demand by sustaining the order in original. Still not being satisfied, the department has knocked the door of the Tribunal.

4. With this background we heard Shri M.R. Sharma, Ld. DR and Mr. M. Saharan, Ld. Counsel for the respondent.

5. From the record, it appears that the identical issue was before the Hon'ble Supreme Court in the case of *Collector v/s Fair Bank Morse (I) Ltd. - 1996 (86) ELT A76 (SC*) where it was held that sewage is essentially a liquid though muddy, hence, sewage handling non-clog and angle flow horizontal/ vertical pumps are classified as power driven pumps under the erstwhile Tariff Item 30A of the Central Excise Tariff.

6. Further, the Tribunal in the case *of Collector of Central Excise V/s Fair Bank Morse (l) Ltd , Final Order No. 1993 (68) ELT 153* (Tribunal) observed that:

> "liquids are fluids, flowing or capable of flowing, thus the sewage is nothing but waste water. The pump has been defined as a machine for raising of fluids i.e. gases or liquids. Conversely, anything which is capable of being raised by a pump, if not a gas will be liquid. Sewage is essentially muddy water and, therefore, is a liquid. Hence, the raw sewage, slurry drainage, industrial wastes are nothing but a liquid. The Tribunal thus allowed the claim of the assessee at the concessional rate".

7. Following above ratio, we find no reason to interfere with the impugned order passed by the Commissioner (Appeals). The same is hereby sustained alongwith the reasons mentioned therein.
8. In the result, the appeal filed by the department is dismissed.

[Order Dictated and Pronounced in the open court]

(Ashok K. Arya)
Member (Technical)

(Justice Dr. Satish Chandra)
President

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