

2013 (2) ECS (131) (Tri - Mum)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

WEST REGIONAL BENCH AT MUMBAI

COURT NO. II

Whirlpool of India Ltd.

Versus

Commissioner of Customs (Import), Nhava Sheva

APPEAL Nos. C/303, 304, & 305/09 - Mum

(Arising out of order – in – Appeal No. 58 to 60 (Gr.VA) 2012 (JNCH) / IMP – 53 to 55 dated 31.01.2012 passed by the Commissioner of Customs, (Appeals), Mumbai – II, JNCH, Nhava Sheva)

Date of Hearing: 4.12.2012

Date of Decision: 4.12.2012

Whirlpool of India Ltd.,
Pradeep Kapur

Appellant

Versus

Commissioner of Customs (Import),
Nhava Sheva

Respondent

Appearance:

Shri Aqeel Sheerazi, Advocate for Appellant

Shri Navneet, Addl.Comm.(AR) for Respondent

CORAM

HON'BLE SHRI P.R. CHANDRASEKHARAN, MEMBER (TECHNICAL)
and
HON'BLE SHRI ANIL COUDHARY, MEMBER (JUDICIAL)

ORDER NO. A/49 to 51/13/CSTB/C-I

“It is a settled decision in law that the Tribunal has no power to review its own order, however, modification of the order can be asked in the event of “change in circumstances” as held in Baron International Ltd. case cited supra relied upon by the Revenue.” [Para 5.9]

Per: Shri P.R. Chandrasekharan, Member (Technical)

- 1 The three appeals are directed against order – in – appeal No. 58 to 60 (Gr. VA) 2012 (JNCH) / IMP – 53 to 55 dated 31.01.2012 passed by the Commissioner of Customs (Appeals), Mumbai – II. As all of them involve a common issue, they are taken up together for consideration.
- 2 The appellant, M/s. Whirlpool of India Ltd., filed bill of entry No. 3517441 dated 17.5.2011 for the clearance of “Pura Fresh Deluxe” and “RO – 6.5L Mineral Enrichment System (Reverse Osmosis Water Purifier)” and claimed classification under CTH 84212190 and CVD exemption under Central Excise Notification No. 6/2006 (Sr.No. 8B). The adjudicating officer ordered assessment of the goods under CTH 84212120 with the benefit of Notification No. 6/2006 – CE under Sr. No. 8D. The appellant preferred an appeal before the lower appellate authority who dismissed their appeal and hence they are before us.
- 3 The learned counsel for the appellant submits that the products imported by them are water purifiers and they are not “household type filters” specified in CTH 84212120. Therefore, they are rightly classifiable under CTH 84212190 under the category “other”. Further, they are eligible for CVD exemption under Notification No.6/2006 dated 1.3.2006 under sr.n. 8B which grants exemption from excise duty in respect of water purification equipment based on technologies, which inter alia includes reverse osmosis technology using thin film composite membrane. However, the Revenue has classified their product under Heading 84212120 and charged CVD @5%. He further submits that the water purifier imported by them performs more functions apart from filtration. He further submits that filtration process removes dirt and sediments to clarify water and in some cases, it may also remove cysts whereas a water purifier undertakes a six

stage process and removes viruses and bacteria from contaminated water and, therefore, it is different from water filters. He relies on the information available in this regard from various websites. He also relies on the decision of the apex court in the case of A.P. Indl. Components Ltd. [2000 (115) ELT 33 (SC)] wherein the apex court held that the benefit of excise duty exemption would not be available to product which undertakes activities other than filtration thereby distinguishing between a water purifier and water filter.

4 The learned AR, on the other hand, submits that as per the product catalogue for the imported goods, the equipment consists of plus – sediment filter, pre – carbon filter, post – carbon filter and RO membrane filter. Even though these filters may have different capacities of filtration with respect to removal of contaminants from the water, nevertheless they are all filter and, therefore, they come under the category of household filters classifiable under Heading 84212120. There is no dispute of the fact that these are used in households. In view of the above, he submits that the classification of the product under Heading 84212120 is correct in law and hence needs to be upheld.

5 We have carefully considered the submissions made by both the sides.

5.1. Heading No. 8421 and the entries relevant for the classification in this case are reproduced below: -

“8421 -	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases

	Filtering or purifying machinery and apparatus for liquids
8421 21 -	For filtering or purifying water.
8421 21 10 ---	Ion exchange plant or apparatus
8421 21 20 ---	Household type filters
8421 21 90 ---	Other.”

5.2. The tariff entry for CTH 842121 uses the term “For filtering or purifying water”. In other words, the words “filtering or purifying” are used synonymously. We have also perused the HSN Explanatory Notes which say that the heading includes

domestic type water filters. There is no distinction made in the Notes between a water filter and a water purifier. Therefore, all types of water filters irrespective of the process used for filtrations of water would come under CTH 84212120 if they are intended for use in the household.

- 5.3. We have perused the product catalogue in respect of the impugned goods. The product catalogue says that Pura Fresh Deluxe is an advanced six – stage purification process that provides anti – microbial protection and reduces ionic particles including heavy metals, pesticides and total dissolved solids from the water. It consists of – (1) pre – filter, made of polypropylene, to remove large visible impurities; (2) & (3) plus – sediment filter, made of polypropylene mesh and polyester, which reduces undissolved particles such as dirt, sand, rust particles and other sediments from feed water and protects membrane and pre – carbon filter from being clogged; (4) pre – carbon filter, made of activated carbon (coconut material), which reduces harmful organic substances including Tri – halo methane, odor, volatile organic compounds and chlorine; (5) RO membrane filter, made of polyamide and polysulfone, which reduces water contaminants such as heavy metals and waterborne micro – organisms; and (6) post – carbon filter, made of silver activated carbon (coconut material), which reduces bad taste, odor and improves water taste and hygienic condition. From the product literature, it is seen that 4 different types of filters are used to achieve various types of purification of water; nonetheless all of them undertake filtration of different kinds of contaminants present in the water. Merely because different types of technology are used, it does not cease to be a filter.
- 5.4. Technical literature available at the website www.espwaterproducts.com states that “Reverse osmosis systems produce pure water by forcing untreated water or tap water through their reverse osmosis membrane. The membrane lets only water molecules pass through directing it to the unit's storage tank. The impurities that are separated from the water molecules are forced down the drain. The system consists of both pre and post filters which add additional contaminant removal and can improve water taste.”
- 5.5. From the product catalogue and literature on the subject, it is clear that the processes undertaken are all purification of water through filtration and different materials are used to undertake the filtration to achieve higher levels of purification. Therefore, the impugned goods are nothing but water filters and as they are commonly used in households, they qualify to be classified under Heading 84212120 dealing with household type filters and we hold accordingly.

5.6. Notification No. 6 / 2006 – CE dated 1.3.2006 reads as follows : -

S.No	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	condition
8B	8421 21 (except 8421 21 20)	Water Purification equipment, based on following technologies:- (a) Ultra – filtration Technology using poly acrylonite membranes; or polysulphone membranes or (b) Arsenic Removal Technology using ceramic micro – filtration membrane; or	Nil	--
		(c) Reverse Osmosis Technology using thin film composite membrane(TFC); or (d) Candle – less terracotta water filtration.		--
8C	8421 21 20	(i) Water filters functioning without electricity and pressurized tap water, and replaceable kits thereof; (ii) Replaceable kits of all water filters except those operating on reverse osmosis technology.	Nil 4%	--
8D	8421 21	Water filtration or purification equipment (e)		

Sr. No. 8 B excludes from its scope Heading 84212 20. Therefore the lower authority has correctly denied the CVD exemption. However, under sr.no 8 D all water filtration or purification equipment falling under CTH 842121 are eligible for a concessional rate of CVD of 4% which has been extended to the appellant in

the instant case. Therefore, the assessment done by the lower appellate and adjudicating authorities are correct in law and we hold accordingly.

- 5.7. In the consumer guide to water filters provided by Natural Resources Defense Council, a popular NGO registered in America, it is stated that the water filters can use 5 types of filtration, namely, activated carbon filter, carbon exchange softener, distiller, reverse osmosis and ultraviolet disinfection. Sometimes they are used separately and sometimes they are used in combination. Nevertheless all of them come under the category of water filters.
- 5.8. While Heading No. 84212120 deals with household type filters, Heading 84212190 is the residual category dealing with "Other". The Hon'ble Supreme Court in the case of CC (G), New Delhi vs. Gujarat Perstorp Electronics Ltd. 2005 (186) ELT 532 (SC) held that if a product has to be classified under a main entry, priority should be given to that and not to residual entry. In the present case, Heading 84212120 is the specific entry and 84212190 is the residual entry. Therefore, following the above principle, 84212120 has to be preferred over 84212190.
- 5.9. The Hon'ble apex court in the case of CCE, Ghaziabad vs. International Tobacco Co. Ltd. 2008 (231) ELT 207 (SC) held that the basic character, function and use is more important than the name used in trade parlance. In the present case there is no doubt that the goods in question, filters/purifies water and, therefore, it qualifies to be classified as a filter.
- 5.10. Further, in the case of Philips India Ltd. vs. CCE, Pune 1996 (81) ELT 375 (T), a question arose before this Tribunal whether the radio / transistor set with a built – in facility / of sound recording and reproducing is eligible for duty exemption under Notification 56/93 dated 28.2.1993 which was available for radio sets. This Tribunal held that merely because the equipments is capable of sound recording and reproducing, it cannot be taken away from the expression radio set. This decision of the Tribunal was upheld by the apex court in CCE vs. Poonitronics (India) Pvt. Ltd. 1998 (97) ELT A 134 (SC). Applying the ratio to the present case, merely because a water purifier performs additional functions apart from filtration, it does not cease to be a water filter.

- 6 In view of the foregoing, we hold that the impugned goods imported by the appellant merit classification under CTH84212120 as "household type filters" and

not under the residual category under CTH 84212190 as 'Other'. Thus the appeals are devoid of merits and accordingly we dismiss the same.

(Operative part pronounced in Court)