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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-12-1996

Reported in : (1997)(92)ELT66TriDel

Appellant : Asia Engineering Co.

Respondent : Collector of Customs

Judgement :

1. This appeal arises from the Order-in-Appeal dated 30th May, 1989, passed by the Collector of Customs (Appeals), Bombay.
2. The appellants imported smoke detectors (Sensor) and claimed assessment under Chapter 9027.80 instead of Heading 8531.10 of the Customs Tariff. The Learned Collector rejected the plea for classification under 90.27. Sub-heading 9027.80 inter alia, covers other instruments and apparatus for measuring or checking the quantities of heat; while sub-heading 85.31 deals with electric sound or visual signalling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms). It was pleaded before the Collector by the appellants that the Explanatory notes under Heading 85.31 appearing at page 1383 rules out for fire alarms incorporating smoke detectors containing a radio active surface (Heading 90.22) since the smoke detector imported by the appellant contains a radio active source. It was pleaded that the classification under 85.31 was ruled out in terms of the above said Explanatory note. It was pleaded that the item did not become fire alarm but only detected the smoke with radio active source. They also relied on the earlier order of the Collector Bombay where the same item had been held to

be classifiable under Heading 90.27, for an approval pertaining to import licence. The appellants also relied on the opinion given by the DGTD that the smoke detector is a complete instrument and also relied on the Chartered Engineer's certificate dated 20th May, 1989 which stated that it is an equipment containing ionisation chamber, consisting of a Radio Active Source, mounted between two metal electrodes to which the voltage is to be applied as stated in the manufacturers' literature which further states that these detectors are sensitive to visible and invisible smoke particles produced during the incipient stage of a developing fire.

They also relied on the past Bill of Entries wherein smoke detectors with B101 B was assessed under 9027.80 and not under 8531.10. The Learned Collector rejected the contention of the appellants and held that the Explanatory note of HSN relied by the importer to fire alarms incorporating with smoke detectors containing the radio active substance, and not a smoke detector itself. The Collector also held that the item cannot be considered as an instrument for analysis of gas or smoke and as such it could not be classified under 9027.80 on the ground that when the visible and invisible smoke particles in the incipient stage of developing fire exceed the critical limit, the instrument initiate an alarm. Therefore, it is a fire alarm under sub-heading 8531.10 and not other as an instrument and apparatus for measuring or checking the quantities of heat.

3. Arguing for the appellants, the Learned Advocate, Shri V.R. Mulick relied on the submissions made before the lower authorities. He submitted that the instrument is not a fire alarm and which does not give any alarm in terms of a bell or a signal. It merely passes on an information to the other gadgets. The Learned Advocate also relied on the ruling rendered in the case of BHEL v. Collector of Customs, as reported in 1988 (18) ECC. T 111.

4. The Learned DR, Shri K.K. Jha submitted that the item has to be considered as part of fire alarm and that the item does not analyse quantum of smoke but merely sensitive to smoke. Therefore, it is considered as a fire alarm and classification adopted by the lower authorities is required to be confirmed.

5. We have carefully considered the submissions made by both the sides and have perused the records, examined the literature pertaining to the item in question.

6. The catalogue pertaining to the smoke detector stated that the Apollo Series 30 ionisation smoke detectors are designed to respond to smoke in accordance with the sensitivity requirements of the European Standard EN 54: Part 7 : 1984 (BS 5445 : Part 7 : 1984). It further states that the detectors are sensitive to visible and invisible smoke particles produced during the incipient stages of a developing fire. It states that they are suitable for use as early warning fire detectors in a wide range of industrial, commercial and residential environments.

It states that the standard version is suitable for applications where rapid response to smoke is required, for example in escape routes. It further states that the integrating version responds only when threshold quantities smoke are continuously present for approximately 20 seconds and is used in applications where, during the safe use of a building, small amounts of smoke are occasionally generated. The integrating version is also suitable for use where there are likely to be sudden gusts of wind in excess of 10 meters/sec. The operating principle of the item states that the detector contains an ionisation chamber consisting of a small Americium 241 radioactive source mounted between two metal electrodes to which a voltage is applied. The alpha particles emitted by the americium ionise the air into positive and negative ions which separate and travel to electrodes of opposite sign.

Some ions collide and recombine, but the net result is flow of a small electrical current, in the order of 2×10^{-9} amps, between the electrodes. When smoke particles enter the chamber ions become attached to them. As the particles are very much larger than the ions and collide more frequently, an increase in the rate of ion recombination and a reduction in the chamber current occurs. This reduction in current can be used to monitor smoke concentration. In practice it is more practical to monitor the voltage change needed to maintain an essentially constant current through the ionisation chamber. It states that this is achieved in the Apollo detector connecting in series with the smoke sensing chamber an almost sealed

reference ionisation chamber containing clear air. It further states that if the voltage across the two chambers is held constant the voltage appearing across the sensing chamber increases when smoke enters the deter. A field effect transistor (MOSFET) monitors the voltage and initiates an alarm when a preset level is exceeded. It further states that the use of an almost sealed reference chamber provides a degree of compensation for changes in sensing atmospheric pressure, temperature and humidity. The electrical description of the item states that the detector is designed to be connected to a central control unit providing a two wire monitored supply of between 17 volts and 28 volts d.c.

Terminals 1 and 6 are provided for the connection of the incoming positive and negative supplies respectively.

Terminals 2 and 5 are connected to terminals 5 and 6 respectively by tracks on the detector's printed circuit board. They provide supply outputs for the connection of additional detectors or an end of line monitoring device. This method of connection permits continuity monitoring of both the positive and negative supplies through the detector, including detector to mounting base supply connections.

It further states that the smoke entering the open chamber causes the gate of TR1 to become more negative. When the turn on voltage of TR1 is reached its source to drain resistance switches from several megaohms to a few ohms. The current through TR1 develops a voltage across resistor R2 and triggers the SCR into a conducting state. This results in illumination of the light emitting diode LED via diode D2 and resistor Ra and Rg and the switching off of TR1. On a reading of this material it is clear that the item is a smoke detector and the smoke is measured in ionisation chamber and states of a signal when the smoke occurs a particular limit to the fire alarm instrument to which this item is connected. The item is an independent in itself and acts separately and does not become a part of fire alarm. What is classifiable under sub-heading 8531.10 are electric sound or visual signalling apparatus (for e.g. bells, sirens, burglars and the fire alarm). The item presently in question does not let out any sound signals but merely detects the smoke levels and passes on to the fire alarm system. The sub-heading 9027.10 refers to instruments and apparatus for measuring or checking the quantities of

heat. In the Explanatory notes under Heading 8531.10 at page 1383 excludes fire alarms incorporating smoke detectors containing a radio active surface.

In the present case it is clearly noticed that the system works on ionisation with radio active source as can be seen from the literature.

The letter dated 3-1-1986 issued by the DGTD also shows that the smoke detectors is an instrument and it has to be held under para 41 of Import Export Policy (Vol. I), 198588. The Chartered Engineer has issued a certificate dated 20th May, 1989 who has stated that the smoke detectors are fitted in different rooms on the ceilings and connected by electric wirings to the Fire Alarm Panel in the Control Room. He has stated that this equipment is of size 69mm x 86mm diameter and contains an ionisation chamber, consisting of a Radio Active Source, mounted between two metal electrodes, to which a voltage is to be applied as stated in the manufacturer's literature. He further states that these detectors are sensitive to visible and invisible smoke particles, produced during the incipient stages of a developing fire. The certificate states that this is the only function of the said smoke detector, which is conformed by IS: 2189-1988, which defines in Clause 4.1.2.1 the ionisation smoke detectors as detectors employing ionisation chamber as sensing means for detecting aerosols give-off by fires. The certificate states that the smoke detector is only to detect the presence of smoke in a given area and is suitable for detecting slow and rapidly developing fire producing visible or invisible smoke particles. It cannot by itself give any sound or alarm or audio signals, even after supply of electricity. It further states that it is the fire alarm panel which gives the sound alarm and not the instrument in question.

7. Taking into consideration all the materials on record namely, literature and the certificate issued by the DGTD and Chartered Engineer who has given their opinion that the item is not a fire alarm classified under sub-heading 8531.10 of the Customs Tariff; we hold that the item is classifiable under sub-heading 9027.80 of the tariff, as claimed by the appellants.

7(a). It is also noticed that the proceedings against the appellants for violation of import licence and also for assessment under concessional rate of duty in terms of Notification 233/83 was considered by the Collector of Customs, Bombay by

Order-in-Original dated 18-11-1985 who has on examination of the technical literature held that the item is in the nature of complete instrument meant for detecting smoke and cannot by any stretch of imagination be treated as raw material consumables for components which alone are covered by the OGL in Appendix 6(1) list 8(1) April-March, 1985-88 Import Policy Book.

The Learned Collector has also held that the item is a complete smoke detecting system and has only to be connected to a control panel for necessary indication, as regards the presence of smoke in an area where the detector is installed. The finding pertaining to the item being a complete instrument has not been challenged by the Revenue and the separate proceedings initiated by the Collector of Customs. Therefore taking into consideration all these material on record it has to be held that the item in question is an instrument and apparatus for measuring or checking the quantities of heat and it is covered under sub-heading 9027.80. *Bharat Heavy Electricals Ltd. v. Collector of Customs* as reported in 1988 (18) ECC.T 111, the Tribunal held that flame sensing system for measuring the intensity of flame is classifiable under 90.28 of the Customs Tariff and not Chapter Headings 85.17, 85.18/27. The ratio of this judgment is also applicable to the facts of the present case. In that view of the matter, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

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