

**Transformers and Electricals Vs. Collector of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Feb-16-1983

**Reported in :** (1983)(14)ELT1801TriDel

**Appellant :** Transformers and Electricals

**Respondent :** Collector of Customs

**Judgement :**

1. A Revision Application was filed against Orders No. C. 27AP/51/1980, 52/1980, 53/1980, 54/1980, 55/1980 and 56/1980 all dated 21-5-82 which was transferred by the Government of India to the Tribunal for disposal in terms of Section 131B(2) of the Customs Act, 1962. Since there were altogether six appeals involved, separate appeals have been filed in the other five cases also. We are dealing with Order No. 51/1980, in this case but the subject being identical, the decision will apply mutatis mutandis to the other appeals.

2. M/s. Transformers and Electricals, the Appellants, imported at Cochin six consignments of Porcelain Insulators, which were originally assessed under Bills of Entry No. 403 & 404/30-9-77 and 481 to 484/24-8-77, applying heading 85" 18/27 (i) CTA, 23B(4) CET read with Notn. No. 152/71-C.E., dt. 26-11-71 at 60%+15%4-CVD at 15%. Since Notification No. 152 of 71 was deemed to exempt only Porcelain Insulators and complete insulators were classifiable under item 68, the Notification was held to be redundant by the Assistant Collector of Customs, Appraising, and provisional demands under Section 28(1) of the Customs Act, were issued. The Assistant Collector rejected the Appellants' contention that they

are complete insulators and also their alternative plea that, if they are not considered complete Insulators, they would come within the ambit of Exemption Notification No.362/Cus., dated 2-8-76 and would not, therefore, attract countervailing duty. He, therefore, held that such parts of insulators attract duty at the statutory rate under item 23B(4) CET. Aggrieved by these order an appeal was filed in which it was contended that the Procelain insulators fall squarely within Notification No. 152/71 and a number of documents were furnished in support. All the documents show that the imported goods were described as porcelain insulators only. It was also explained with reference to the catalogue that only the porcelain part of the transformer bushings is called insulator. In the impugned order the Appellate Collector stated "Notification 152 of 71-C.E., dated 26-7-71 has become otiose. The Porcelain Insulator is a part of the Transformer Bushing. This is only a Porcelain Insulating Shell for the Transformer Bushing and has to conform to strict electrical specifications. All the same, what has been imported is not a complete insulator but only an insulating shell without fittings. As decided by the Central Board of Excise and Customs and reproduced in Madras Custom House Public Notice 217/77, only the Procelain part of the insulator should be assessed to duty as Porcelainware under item 23B of the CET. In the light of this decision and since only the porcelain shell without fittings has been imported, I find no reason to interfere with the order confirming demand. The appeal is accordingly rejected." 3. In the present appeal, it is stated that the Appellants are manufacturing transformers and allied equipment of which transformer bushings are one. These bushings are made up of a large number of parts including porcelain insulators. The said insulators were covered by Import Licences and Yen Credit Arrangements between the Governments of Japan and India. What has been imported in these cases is nothing but electrical insulators made of porcelain for use as part of the transformer bushings manufactured by the Appellants. They are known as such not only in common parlance but even in technical or scientific parlance and the findings of the lower authorities that they are not insulators is against all logic, reason and common sense. They erred in embarking upon an irrelevant enquiry as to whether the imported insulators were complete or not. No reasons why the various documentary and other evidence was rejected have been given, thereby vitiating the orders on grounds of natural justice. The lower

authorities ought to have appreciated that porcelain, by its very nature, cannot be pierced or otherwise treated and the findings that only parts of insulators have been imported, is patently erroneous.

4. Shri J. Vellapally explained that Writ, which was pending in the Kerala High Court, has been finally disposed of in view of the pendency of this case before the Tribunal but the stay has been allowed to continue till the end of June by the High Court. He referred to the Order for the said goods, the Inspection Certificate by the Japanese authorities, the Test Report from the Japanese Suppliers, the Invoice, the Bill of Lading, the Certificate of Origin and the Affidavit, all of which confirm that "Porcelain Insulators" had been imported. The Government of India Import Licences and the Certificate of the Indian Embassy for such imports, were all along being accepted till a Tariff Advice gave rise to the present problem. In fact, I.S.I. Specification IS 5621 of 1980, clearly mentions that this standard covers the requirements of insulator shrouds, weather shields and containers made of ceramic material and applies before any metal fittings are attached to them. These components are collectively referred to in this standard as "hollow insulators". He contended that the Department had wrongly introduced the concept of metal fittings for an insulator. The I.S.I. Specification clearly mentions that hollow insulators are used in (a) instrument transformers and (b) bushings, among other electrical equipment. Counsel further pleaded that the Supreme Court had laid down that no authority, however high, can control the decision of a quasi-judicial authority (1978 ELT 345). The Appellate Collector had acted wrongly in being influenced by the Board's decision, as mentioned in his order.

5. For the Department, Shri K.V. Kunhikrishnan quoted the Dictionary of Electrical Engineering to show that a bushing is an insulator and a porcelain insulator is a component of such a bushing. Notification No.152 of 71 exempted electrical insulators made of porcelain which meant complete insulators and not insulator shells made of porcelain. He also relied on the Delhi High Court ruling in C.W. 3980/82-Orient Ceramics Ltd., to show that the Government has the right to issue Tariff Advices for the guidance of the lower authorities. He, therefore, wanted the appeal to be rejected.

6. The Tribunal has carefully considered the arguments on both sides.

There is no escape from the fact that porcelain insulators, without any fittings, are known as such in trade and commercial parlance. The ISI specifications also support the contention that hollow ceramic insulators are treated as such before any metal fittings are attached to them. It would also be difficult to say that Notification No. 152 of 71 which exempts porcelain insulators became otiose by issue of a Tariff Advice over-night. In these circumstances, we are unable to accept the contentions of the Department and we allow this appeal. The order of the Appellate Collector is set aside.

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