

**Collector of Customs Vs. Telco**

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**SooperKanoon Citation :** [sooperkanoon.com/14326](http://sooperkanoon.com/14326)

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

**Decided On :** Sep-14-1998

**Reported in :** (1999)LC128Tri(Delhi)

**Appellant :** Collector of Customs

**Respondent :** Telco

**Judgement :**

1. Question involved in the present appeal is whether oil consumption measuring instrument imported by the respondents herein are entitled to the benefit of Notification No. 189/92-Cus. (aux.). There is no dispute on classification of the said goods under Tariff Heading 90.31 which pertains, inter alia to measuring instrument. Benefit of Notification has been claimed by the respondents herein because they feel it is covered by Sl. No. 45 of the table to the Notification pertaining to "Electrical measuring, checking, analysing or automatically controlling instruments and apparatus". The said expression has been defined by explanation (6) of Notification as follows :- (6) "Electrical measuring, checking, analysing or automatically controlling -instrument and apparatus" means:- (a) instruments or apparatus for measuring or checking electrical quantities; (b) Machines, appliances, instruments or apparatus of a kind described in Heading Nos. 90.14, 90.15, 90.16, 90.17, 90.25, 90.26, 90.27, 90.29, (other than stroboscopes), or 90.31, the operation of which depends on an electrical phenomenon which varies according to the factor to be ascertained or automatically controlled; (c) instruments or apparatus for measuring or detecting alpha, beta, gamma, x-ray,

cosmic or similar radiations; and (d) automatic regulators of electrical quantities, and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be controlled.

2. It is the contentions of the respondents which has been upheld by the lower appellate authority that the measurement of the present instrument is done with the help of load cell, operation of which is dependent on an electrical phenomenon namely the voltage. If the voltage varies according to the "factor" to be ascertained i.e. the consumption of oil (oil weight) then it is to be treated as an electrical measuring instrument. Lower appellate authority has held that the voltage of load cell varies according to the variation in the weight of the oil consumed and, therefore, the lower appellate authority has held the instrument operating on an electrical phenomenon.

3. On the other hand, the original authority has held that it is Geared pump which is an important part of the instrument on which depends quantity of oil to be measured. Measurement of oil is done on the quantity which is pumped from the oil tank to the measuring vessel.

Therefore, the measurement is done on the basis of mechanical principle on which pump works. On this basis the benefit of Notification 189/92-Cus. is proposed to be denied to the respondents.

4. We have heard both sides. We observe that the judgment of the lower appellate authority is more logical. It is no doubt, true, that geared pump brings a certain quantity of oil from the oil tank to the measuring vessel. But the actual measurement in a consumption cycle is essentially done by the load cell as described by the lower appellate authority in the impugned order. The finding of the lower appellate authority is based on a reading of the catalogue. Revenue's only ground is that the role played by gear pump is primary and there is no direct and significant link between electrical phenomenon and the factor to be determined, that is the oil consumed during a measuring cycle. We are of the view that this contention of the Revenue is not correct. The function of the geared pump is to pump the oil from the oil pan into the measuring vessel and finally again the

geared pump pumps back the oil from the measuring vessel via the probe into the oil pan of the internal combustion engine. As soon as the oil level in the measuring vessel has dropped to the opening of the intake tube the oil pressure sensitive switch D II stops the motor of the pump. At this stage the system is ready for the next measuring interval during which the engine will again consume a certain quantity of oil. In this way the operation is repeated for every measuring cycle in the entire testing period.

Depending on the purpose of the measurement of the data obtained during each of the single cycles, it can be evaluated by different methods.

The measuring vessel is suspended on a strain gauge load cell; this method for measuring the oil consumption is a gravimetric one. Now a load cell has been defined in the HSN at page 1532 under Heading 90.31 as follows :- (30) Load Cells which convert changes in applied force (including weight) into proportional changes in voltage. The changes in voltage are generally detected by instrument or measuring, controlling, weighing, etc. and are expressed in the desired units.

4. We, therefore agree with the lower appellate authority that it is a load cell which actually measures the consumption of oil by measuring the changes in voltage, which is caused by difference in weight at the beginning of the measuring cycle and at the end thereof. [During the testing period a number of measurement can be taken and the averaging can also be done to those readings]. Fluctuation in voltage is an electrical phenomenon and, therefore, we are clearly of the view that, the oil consumption instrument imported by the respondents herein operates on the principles of measuring an electrical phenomenon.

Therefore, it is entitled to the benefit of Notification No.189/92-Cus.

5. In view of the foregoing discussions, Revenue's Appeal is dismissed.

Cross objections are dismissed as not maintainable because the appellants herein got a complete relief at the hands of the lower appellate authority.

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