

Eacom'S Controls (India) Ltd. Vs. Cc

Eacom'S Controls (India) Ltd. Vs. Cc

SooperKanoon Citation : sooperkanoon.com/14703

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-20-1998

Reported in : (1999)(81)LC25Tri(Delhi)

Judge : S Peeran, K D Shiben

Appellant : Eacom'S Controls (India) Ltd.

Respondent : Cc

Judgement :

1. This appeal arises from the order-in-appeal dt. 31.8.1988, passed by the Collector (Appeals), New Delhi. The appellants have imported a consignment of 'Converters' vide Bill of Entry No. 27593 dt. 19.5.1987 and claimed the assessment under Chapter heading 9032.89 of the Customs Tariff Act, 1975 along with the benefit of exemption from auxiliary and countervailing duty under Notification No. 69/86 read with 112/87. The department did not accept the assessment claimed by the importer, and held the item to be classifiable under Chapter sub-heading 8543.80. The Assistant Collector in the order-in-original has referred to examination of the goods done by the department. It was found to be nothing but current to pneumatic converters type ITOPO-I. It has been noted that the basic function of the above item is to convert electronic analogue signals to pneumatic signals. It converts 4.20 mA dc current to 3.15 Psig and provided high output capacity to power any positioning or actuating device. The converter is usually located in the control loop between the controller and the positioner or actuator when a dc Milliamp input is applied to the voice coil, a directly

proportional or inversely proportional pneumatic output signals is developed. It is stated in the order-in-original that the item is used in many applications when an electronic signal is supplied but a pneumatic device is to control such as positioners diaphragm actuated valves or actuators. It is further stated that it can also be used where feedback to pneumatic controls from electronic analysers and transmitters is needed.

2. The detailed catalogue for converter from M/s. Bailey gives the complete functional description as follows: The above function of converter is accomplished by analysing the input to stationary coil of an electro magnetic system. Flux lines exposed at the gap applying a proportional forces to a small permanent magnet mounted on the flapper beam. Range adjustment is performed at the potentiometer connected together with a resistor in parallel to the coil.

The extremely low mass and the balanced suspension system of the flapper beam makes the ITOPO IV virtually insensitive to shock and vibration.

3. The department relied on the Explanatory notes of Chapter 90.32 which gives the details and characteristics an item should have for classification under the aforesaid entry. The department referred to the Explanatory notes at page 1533 to 1538 and have concluded that any Automatic control instrument/apparatus/device should have the following three features: 1. A device for measuring the variable to be controlled or which determines the actual value of the variable to be controlled. It can also convert the same into a proportional electrical signals.

2. A controlled device which compares the measured value with the desired value and actuates the device described in (3) below accordingly, generally in the form of a modulated current.

3. A starting, stopping or operating device. The function of this may be to supply current to an actuator in accordance with the signal received from the controlled device.

4. Therefore, it is stated that classification of the item under Chapter 90.32 should satisfy all the above three characteristics. It is stated that in case the item fails to conform to the definition given above, the devices are to be classified in a different heading as given in the explanatory notes. For example the electrical measuring devices are to be classified in their own heading (90.25, 90.26, 90.30).

5. It has been held that Electrical control devices are to be classified in this heading as incomplete automatically controlled instruments of apparatus, starting, stopping or operating devices are generally to be classified in heading 85.36 (switches, relays, etc.).

Observing the catalogue, the Assistant Collector in the impugned order held that it is very clear that the function of the item is simply to convert, Electric analogue signals to pneumatic signals. It converts 4.20 mA dc to 3-15 Psig and provides high output capacity to power any positioning or actuated device. He has observed that none of the three above mentioned criterion are satisfied and that the item is neither measuring device nor a controlling device. Therefore, it does not fall as a starting, stopping or operating devices either. He has also rejected the claim of the importer that the classification of the item under Chapter 90.32 should be based on the function of the equipment.

He has observed that in this case although an electrical signal is used, the equipment is meant to control pneumatic devices. He has also held that from the catalogue, nowhere it is established that it is a controlling device. The basic features of the item, imported is that of a Transducer. He has referred to the definition of a transducer given in the new Penguin dictionary of electronics by E.C. Young is as follows: Transducer:--Any device that convert electrical parameter for example, sound, pressure, or light, into electrical signals or vice versa. The function of the item here is to convert electrical signals to pneumatic signals and thus it falls in the category of a "Transducer.

6. Noting the said definitions, the Assistant Collector has observed that the transducers do not have any specific classification under the customs tariff. They have to be classified according to their function that they perform. For example all devices of electrical converters such as rectifiers inverters, alternating current

converters and cycle converters and direct current converters are classifiable under Chapter 85.04 of the Customs Tariff as per Explanatory notes given at page 1338. He has also observed that in all these cases, the converters are converting electrical current in one form to electrical current in another form. For example, inverters convert direct current to alternate current, direct current converters convert direct current to a different voltage. Therefore, he has observed that "current to pneumatic converter", cannot be classified under 85.04 as it converts electric signal to pneumatic signals and it is clearly classifiable only under 85.43 on the ground that Chapter note on 85.43 indicates that electrical machine and apparatus having individual function not specified or included elsewhere in this chapter will fall under 85.43.

He has concluded that in the present case the item imported performs individual function of converting electrical analogue signal to the pneumatic signal and thus merits classification under Chapter 85.43.80 of the Customs Tariff.

7. Aggrieved by the said order the importer referred an appeal before the Collector. The Learned Collector also confirmed the finding of the Assistant Collector. He has noted the literature provided by the importer and held that IP converter is a part of current to pneumatic converters type ITOPO-IV. Such type of converter, he has held that the item is therefore, a complete instrument by itself. However, on examination he has held that the item is a part of electrical machinery and hence it is more appropriately classifiable under Chapter 85 rather than Chapter 90.

8. We have heard the Learned Advocate, Shri Vivek Kohli for the appellants and the Learned DR, Shri K.K. Jha for the Revenue.

9. The Learned Advocate submitted that the item IP converter is a device which converts electrical current signal of 4-20 Milliamp into pneumatic pressure of 3-15 PSI (pressure per square inch). He submitted that the item senses the liquid or gas pressure and converts the pressure into 4-20 milliamp electronic signal. It is his contention that heading 85.43 applies to particle accelerators, signal generators, machines and apparatus for electroplating, electrolysis or electrophoresis and other machines and apparatus besides parts. He submits that

the item does not come within sub-heading 8543.80 which deals with other machines and apparatus, as the item is only a part of electronic item. Referring to page 1402 of Explanatory note of HSN, the Learned Advocate argued that for classifying the item under this heading the item should have an individual function. It is his contention that the item does not have an individual function. He submits that the Explanatory notes of Chapter 8479 is also to be read along with this note for classifying the product, where it has been held that the item would fall under heading 8543 only, if it is not more specifically covered by any other heading in any other Chapter. He submits that the item is specifically covered under Chapter heading 90.32 which reads "Automatic regulating or controlling instruments and apparatus". He also referred to Note 6 of the Chapter 90 which deals with the item falling under heading 90.32 to support his claim. He submits that the item is inseparable from other portion of the machinery, hence the classification adopted by the department under Chapter heading 8543 is not at all appropriate. He also submitted that the Assistant Collector has gone wrong to hold that the item converts electric signal from one form to another and such findings are wrong.

10. The Learned DR supporting the order submitted that the catalogue does not establish that the item is a controlling device. The item being a transducer has been rightly classified under 85.43. The Learned DR also referred to at page 2053 of McGraw Hill dictionary, which defines the transducers. The item has got an individual function, as it converts one form of energy into another form of energy. It can perform individually and is not dependent on any other portion of a machinery, as an electronic signal is converted into pneumatic pressure. He submits that it is not a part of an instrument or a machine either.

Therefore, it is his contention that the appellants claim for classification under sub-heading 9032.89 as 'other' is not appropriate as the item is not performing any function of automatic regulating or controlling instruments and apparatus. The Learned DR also relied on Explanatory notes at page 1535 to support the claim of the department.

Referring to part B appearing at page 1314 of the said Explanatory notes, he contends that the item is not an integral and inseparable part, in the operation of a

machine, appliance or entity. He submits that the item has got a part function and therefore, it does not get ruled out from heading 85.43.

11. We have carefully considered the submissions made by both the sides and have perused the records.

12. The basic function of the item, as per the order in original which is not disputed by the appellants is to convert electronic analogue signals to pneumatic signals and that it converts 4-20 mA dc current to 3.15 Psig and provides high output capacity to power any positioning or actuating device. The question is as to whether this item having this function can be considered to be an individual function to merit classification under tariff sub-heading 8543.80, which reads: Heading 85.43 reads: Electrical machines and apparatus, having individual

13. To merit classification under this heading, the item should not have been specified or included in any other chapter and the sub item also indicate that it is a residuary item. Thus for classifying this item, it should be an electrical machine or apparatus having individual function not having been specified elsewhere.

14. The Assistant Collector has noted in his order that the item is used in many application where an electric signal is supplied but a Pneumatic device is to be controlled, such as, positioner diaphragm actuated valves or actuators. It is noted that the item can be used where feedback to pneumatic controls from electric analyser, and transmitters is needed. This finding is supported by the product literature which has been extracted supra. Thus, it is seen that the item does surely have a specific defined function and such function can indeed be considered as 'individual function', as the use of the item appears to be a general one and not totally designed specifically for any set of a machinery as a specific and inseparable part, although it has to function in conjunction with other parts and is placed or located in the control loop between controller and the positioner or actuator, when a dc Milliamp input is applied to the voice coil, and when so done, a directly proportional or inversely proportional pneumatic output signals is developed.

15. Now, the other factor to be examined is as to whether the item is an 'Electric machine or an apparatus', and whether it is specified elsewhere i.e. in chapter

sub-heading 9032.89 as claimed by the importer. Chapter sub-heading 9032.89 is the residuary (other) under description "Automatic regulating or controlling instrument and apparatus". The Assistant Collector has relied on the Explanatory notes of Chapter 90.32 to rule out the classification under this heading, as the item lacks the three features specified therein, which has been incorporated at para 3 above. As can be seen from those criteria the device should be for measuring the variable to be controlled or which determines the actual value of the variable to be controlled. The device can also convert the same into a proportional electrical signals. On further examination, the Assistant Collector has found that item does not satisfy this criteria inasmuch as it is not a device for measuring the variable or an automatic regulating apparatus or controlling instrument. The definition of 'Transducer' as given in the new penguin dictionary which is extracted above also clearly indicates that the item is a device that converts electrical parameter, for e.g.

Sound, Pressure or light into electrical signal or vice versa. The further function shown therein is that the item converts electrical signal into pneumatic signal or energy. At page 1536 of Explanatory note under Chapter 90, it is clearly stated that actuators are to be classified in their own appropriate headings (adjustable clamp under heading 84.25; motorised or Solenoid Valve under heading 84.81; electro-magnetic positioner under heading 85.05 etc.). It further states that if the automatic regulator is combined with the actuator, the classification of the whole is to be determined under either Interpretative Rule 1 or Rule 3(b). The item in question is not combined with actuator hence there is no need to apply these Rules.

Therefore, on a clear reading of the entire technical material before us the rejection of classification of the item as "automatic regulating or controlling device under heading 90.32" is justified.

16. The Learned Advocate pressed into heading 8579 for consideration.

Reading of HSN at page 1314 indicates that the classification under this heading is for 'machines and mechanical appliances having individual functions, not specified or included elsewhere in that chapter'. The item in question is not a

mechanical appliance and hence this heading gets clearly ruled out.

17. We notice that the item is an 'Electrical apparatus' having an individual function, and it is not elsewhere specified in the Chapter 85, and hence its classification under sub-heading 8543.80 as "other machines and apparatus" is fully justified. There is no other ground urged by the appellant for consideration. Hence, the findings and conclusions arrived at by both the authorities are fully justified and that there is infirmity in the order and hence the appeal is rejected.

18. With respect to Ld. Member (J) I am writing a separate order as under: The catalogue placed in the appeal papers indicates that: The IP Converter converts a standard current input signal to a standard pneumatic signal by generating a mechanical force proportional to the input current and then converting the mechanical force into a pneumatic output signal. This is accomplished in the ITOPO IV by applying the input to a stationary coil of an electromagnetic system. The flux lines exposed at the gap apply a proportional force to a small permanent magnet mounted on the flapper beam (figure I). The flapper, supported on a taut tensioning band, tends to rotate toward the nozzle increasing the nozzle back pressure. The air flowing out of the nozzle provides a restoring force, balancing the force at the magnet. The nozzle is supplied with air through an orifice from the output of a pneumatic booster which is also the pneumatic output of the unit. This arrangement provides a very linear relationship between the electric input and the pneumatic output signal.

19. Classification of such Transducers came up for consideration before Tribunal in case of Polyolcfins Industries Ltd. v. CC, Bombay 1983 ECR 173D (CEGAT). The competing claims there also were between chapter 85 and 90 of the Customs Tariff Act heading. After examining the nature and function of Transducer Tribunal ruled out classification under chapter 85 and held that such goods were correctly classifiable under heading 90.24.

20. Tribunal again in the case of Instrumentation Ltd. v. CC held that Transducer although basically an instrument working on electrical principles are, since the use of these are for mechanical purposes, classifiable under heading 90.28(4). The appeal of the department against this order was dismissed by Hon'ble Apex Court

vide 1995 (78) ELT A 224 (SC)(Court highlights).

21. It is true that these rulings were rendered in the context of erstwhile tariff. The headings 90.24 under the old tariff and 90.32 under the new tariff are extracted below: 90.24 Instruments and apparatus for measuring, checking or automatically controlling the flow, depth, pressure or other variables of liquids or gases or for automatically controlling temperature (for example, pressure gauges, thermostats, level gauges, flow meters, heat meters, automatic oven draught regulators) nor being articles falling within Heading No. 90.14 90.32 Automatic regulating or controlling instruments and apparatus 22. It will be seen that old tariff item 90.24 refers to instruments and apparatus for measuring, checking, or automatic controlling the flow, depth, pressure or other otherwise variable liquid or gases or automatic control temperature. New corresponding entry 90.32 refers to automatic regulating or controlling instruments and apparatus and includes thereunder "other instruments and apparatus". Basically in considering the classification of transducers as automatic regulating controlling instrument there is 110 difference between old tariff and new tariff. The rulings rendered by Tribunal therefore even in the context of old tariff are equally applicable to the new tariff after 1986.

23. From the records, it is seen that this IP Converter which is a transducer is a device which converts electric current signal into numerical pressure. IP Converters are essential operating parts of electrical numerical control scheme which is utilised for measuring and checking flow of liquids or gases in process plants. The Pressure tap taps the pressure signal of the liquid or gas flowing in the pipeline.

The pressure transmitter senses the liquid or gas pressure and converts the pressure into 4-20 mA electronic signal. The electronic controller compares the measured value from the pressure transmitter and desired value from the setter (portion marked C in the diagram). If there is any difference it gives output signal to I.P. Converter. The setter is used to adjust or set the desired value of pressure. The IP converter i.e. the impugned goods, converts the electronic signal of 4 - 20 - MA from the electronic controller into air (pneumatic) signal of 3 - 15 paig The pneumatic positioner receive air signal of 3 - 15 paig from IP converter and applies

the necessary torque on the control valve to open/close it to the desired position so that the required position is restored in the pipeline end.

24. It will be clear that such transducers which convert one form of energy into another form of energy, i.e. electrical to pneumatic, cannot be considered as electrical machines to attract classification under heading 85.43. To merit classification under chapter 85.43 the goods have to have individual function. The Transducer, which is basically a device to convert electrical energy to another form of energy, that is, pneumatic, has no individual function. IP Converter is an essential instrument of the electronic control system which cannot function without this converter. At the same time, IP Converter, unless it is used with the system, cannot function. It thus has no individual function as basically its function depends on the function preceding it and that following it.

25. Illustration of an "individual function" are set out in HSN note page 1314. Air Humidification and Dehumidification are, for instance, individual functions, as these can be performed by appliances operating independently of any machine.

26. On the other hand, even though function of a carburettor is distinct from that of an engine, it is yet not an individual function because operation of Carburettor is inseparable from that of an engine.

27. LP Converter is an essential instrument of a control system as it is used between electronic controller and the pneumatic positioner inasmuch as it passes pneumatic energy to the actuator after converting the electronic current received from electronic controller.

28. In other words, it has no "individual function" as such. Its classification therefore under chapter 85.43 as machinery with individual function is ruled out and the correct classification would only be under C.T.H. 90.32.

29. In view of the reasons mentioned hereinbefore I set aside the impugned order and allow the appeal.

30. In view of the difference of opinion between the Members, following question arises for determination and for reference to Third Member by Hon'ble President.

Whether the impugned goods "Converters" under Chapter subheading 8543.80 of the Customs Tariff as held by the Member (Judicial) and appeal to be rejected.

to hold the same classifiable under Chapter sub-heading 9032.89 of Customs Tariff Act and allow the appeal, as held by Member (Technical). Sd/- Sd/- (Shiben K. Dhar) (S.L. Peeran) 31. The difference of opinion referred to me in this appeal filed by M/s. Eacom's Controls (I) Ltd., is as under: Whether the impugned goods "Converters" were classifiable under Chapter sub-heading No. 8543.80 of the Customs Tariff as held by the Member (J) and appeal to be rejected.

to hold the same classifiable under Chapter sub-heading 9032.89 of Customs Tariff Act and allow the appeal, as held by Member (T).

32. The appellants had imported a consignment of 'converters' and had claimed classification under sub-heading No. 9032.89 of the Customs Tariff. Heading No. 90.32 of the Customs Tariff covered the following: Heading No. Sub-Heading No. Description of Article.

90.32 Automatic regulating or controlling 9032.20 Manostats other instruments and 33. The Assistant Collector of Customs did not agree with the said classification and held that the goods imported were correctly classifiable under sub-heading No. 8543.80 of the Customs Tariff.

Heading No. 85.43 of the Customs Tariff covered the following: Heading No. Sub-Heading No. Description of Article.

85.43 Electrical machines and apparatus having 8543.30 Machines and apparatus for electropla- 8543.80 Other machines and apparatus.

8543.90 Parts.

34. The Id. Member (J) observed that the items in question had a specific definite function, and such function could be considered as 'individual function'. He also observed that the 'Converters' were an electrical apparatus and as they were not elsewhere specified in Chapter 85, their classification under subheading No. 8543.80 as "other machines and apparatus" was fully justified. He agreed with the

findings and conclusions of the Assistant Collector of Customs, which had been confirmed by the Collector of Customs (Appeals), New Delhi.

35. The Id. Member (T) on the other hand had observed that the 'Converters' were in the nature of transducers and could not be considered as electrical machines for the purpose of classification under Heading No. 85.43. He also observed that the goods imported had no individual function. He proposed classification under Heading No. 90.32 of the Customs Tariff.

36. I have heard Shri Dinesh Chander, Advocate, who appeared for the appellants. He submitted that the goods imported were current to pneumatic converters and are usually referred to as I/P (ITOPO IV) Converters. These are part of the basic electrical/pneumatic control scheme and are used by the National Thermal Power Corporation Ltd. The appellants had sought classification under sub-heading No. 9032.89 of the Customs Tariff, while the Revenue had classified them under sub-heading No. 8543.80 of the said Tariff. The function of the I/P Converter was to convert one form of energy (electric) to another (Pneumatic), and in itself it was useless unless it was attached to other process equipment for input and output use. He pleaded for the acceptance of the order proposed by the Id. Member (T).

37. Shri S.N. Ojha, JDR referred to the product literature on record and in particular referred to the basic pneumatic control scheme in which it was shown that I/P Converter is used to convert the electrical signal of 4 - 20 mA (Milli Amperes), from the electronic controller into air signal of 3-15 PSIG (pneumatic signal). These converters were electrical apparatus and had individual functions. He referred to the order proposed by the Id. Member (J) and submitted that under the Harmonised Commodity Description and Coding System (HSN) Explanatory Notes, the classification of the goods in question as automatic, regulating or controlling instruments and apparatus was not proper and, that they were rightly classifiable under sub-heading No. 8543.80 as proposed by the Id. Member (J).

38. I have carefully considered the matter. M/s. Eacom Controls (I) Ltd. had imported Converters I/P for use in process Control Instruments (refer Import Licence at page 19 of the Paper Book and Sl. No. 335 of the list of the items to be

imported as annexed to the Import Licence).

In the invoice, the goods were referred to as Converters. In the product instruction, it is referred that the ITOPO IV (I/P Converter) is an electro pneumatic device that provides a 3-15 PSIG pneumatic output pressure that is directly proportional to an electrical 4-20 mA input signal. The 4-20 mA control signal is applied to the coil of the I/P Converter. An increasing current signal moves a vane assembly away from an electromagnet assembly and toward a nozzle increasing the nozzle back pressure. The increased nozzle back pressure is transmitted to a diaphragm assembly which directs a 3-15 PSIG signal (corresponding to a 4-20 mA dc input control signal) through the output part of the I/P Converter.

38.1. The I/P Converter converts a standard current input signal to a standard pneumatic signal by generating a mechanical force proportional to the input current and then converting the mechanical force into a pneumatic output signal. This is accomplished in the ITOPO IV by applying the input to a stationary coil of an electro magnetic system.

The flux lines exposed at the gap apply a proportional force to a small permanent magnet mounted on the flapper beam. The flapper, supported on a taut tensioning band, tends to rotate towards the nozzle increasing the nozzle back pressure. The air flowing out of the nozzle provides a restoring force, balancing the force at the magnet. The nozzle is supplied with air through an orifice from the output of a pneumatic booster which is also the pneumatic output of the unit. This arrangement provides a very linear relationship between the 'electric input and the pneumatic output signal.

38.2. It is seen from the diagram at page 69 (relating to the basic electrical/pneumatic control scheme), read with Notes at page 68 of the Paper book that I/P Converter plays an important role in the control of pressure and temperature of the gas or liquid in the pipeline. It, along with the pressure transmitter and pneumatic positioner, is placed in the field section. In the control room section are (1) electronic controller (2) setter and (3) auto manual station. Pressure transmitter senses the liquid or gas pressure and converts the pressure into 4-20 mA electrical signal to arrive at the measured value. The desired value of

pressure is set by the setter. In case of difference between the measured value of pressure given by the pressure transmitter and the desired value of pressure given by the setter, the electronic controller gives output signal to the I/P converter. If the electronic controller fails, the control scheme automatically changes over from automatic regulation to manual regulation. The auto/manual station in the control room controls the process at this stage of failure of the electronic controller. When the electronic controller becomes all right, the control scheme again changes over from manual to automatic mode automatically.

38.3. I/P Converter (the goods under import) converts the electronic signal of 4-20 mA from the electronic controller into output pressure - air signal of 3-15 PSIG.38.4. The pneumatic positioner gives air signal of 3-15 PSIG from I/P Converter and applies the necessary torque on the control valve on the pipeline to move to open/close it to the desired position so that the required pressure is restored in the pipeline.

38.5. The diagram at page 71 of the paper book (relating to basic pneumatic temperature control scheme) is explained at page 70 of the paper book. The role of I/P Converter is explained as to convert the current signal of 4-20 mA to 3-15 PSIG pneumatic (mix) signal.

39. It was explained by the importers before the customs authorities that I/P Converter is used in applications where an electric signal is supplied but a pneumatic device is to be controlled, such as positioners, diaphragm, actuated valves or actuators and that it regulates the output as it can give a directly proportional or an inversely proportional output signal. In it the pressure (Pneumatic output non-electrical) was being controlled/regulated by an incoming electrical signal.

39.1. It was also explained that the converter imported is used in the basic electrical/pneumatic control system and basic pneumatic temperature control scheme, in controlling the pressure and temperature of the liquid or gas flowing in the pipeline.

39.2. It is seen that it did not depend for its operation on the properties or effects of electricity such as its electro-magnetic effects, heating properties etc.

40. The appellants had submitted that the converter imported by them was classifiable under sub-heading No. 9032.89 of the Customs Tariff which covers 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. According to them by the converter imported by them, pressure (pneumatic output - non-electrical) is controlled/regulated by an incoming electrical signal.

41. The Id. Member (T) has observed that the Converters were not electrical machines and did not have individual functions. From the product literature, it is seen that the conclusions drawn by the Member (T) are correct.

42. Section XVIII and Chapter 90 of the Customs Tariff covered, among others, measuring, checking, precision instruments and apparatus.

Heading No. 90.32 covered automatic regulating or controlling instruments and apparatus. Sub-heading No. 9032.10 covered thermostats; sub-heading No. 9032.20 covered Manostats. Other instruments and apparatus if hydraulic or pneumatic were classifiable under sub-heading No. 9032.81, sub-heading No. 9032.89 was residuary entry. As per Chapter Note 6 under Chapter 90, the scope of Heading No. 90.32 was specified to the following goods: (a) Instruments and apparatus for automatically controlling the flow, level, pressure, or other variables of liquids or gases, or for automatically controlling temperature whether or not their operation depends on an electrical phenomenon which varies according to the factor to be automatically controlled and (b) 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.

43. It has been explained in the HSN Explanatory Notes that the automatic regulators of Heading No. 90.32 are intended for use in complete automatic control systems which are designed to bring a quantity, electrical or nonelectrical,

to, and maintain it at a desired value, stabilized against any disturbances, by constantly measuring its actual value. They consist essentially of the following devices: (A) A measuring device (sensing device, converter, resistance probe, thermocouple etc.) which determines the actual value of the variable to be controlled and converts it into proportional electrical signal.

(B) An electrical control device which compares the measured value with the desired value and gives a signal (generally in the form of a modulated current).

(C) A starting, stopping or operating device (generally contacts, switches, or circuit breakers, reversing switches or sometimes, relay switches) which supplies current to an actuator in accordance with the signal received from the control devices.

44. From the HSN Explanatory Notes also, it appears that the view taken by the Id. Member (T) was correct.

45. The Id. Member (!) had proposed classification of the converters under sub-heading No. 8543.80 of the Customs Tariff.

45.1. Chapter 85 covers, among others, electrical machinery and equipment and parts thereof. Heading No. 85.43 covered electrical machines and apparatus, having individual functions, not specified or included elsewhere in chapter 85. Sub-heading No. 8543.10 covered particle accelerators. Signal generators were classifiable under sub-heading No. 8543.20, and the machines and apparatus for electro-plating, electrolysis or electrophoresis, under sub-heading No.8543.30. Sub-heading No. 8543.80 was the residuary entry covering other machines and apparatus.

46. As explained in the HSN Explanatory Notes at page 1402 Heading No.85.43 covered all electrical appliances and apparatus which were not covered more specifically by a 1 leading of any other Chapter of the Tariff. Thus, Heading 85.43 was really in the nature of residuary Heading and the goods were to be considered for classification therein only when their classification under "any other specific Heading in Tariff was ruled-out. According to the Explanatory Notes at page 1402, the electrical goods covered more specifically by other chapters were electrical

machinery of Chapter 84 and certain instruments and apparatus of Chapter 90. Thus Chapter 90 will have precedence over Chapter 85. in the HSN Explanatory Notes, while dealing with the scope and structure of Chapter 85 it is provided that in the Chapter Heading 85.43 (along with Heading Nos. 85.05, 85.11 to 85.18 and 85.25 to 85.31), certain machines and appliances which depend for their operation on the properties or effects of electricity such as its electro-magnetic effects, heating properties etc., were covered. For classification under this Heading the electrical appliances and apparatus were to have individual function. The following are to be regarded as "individual functions".

(A) Mechanical devices with or without motors or other driving force whose function can be performed distinctly from and independently of any other machine or appliances.

(B) Mechanical devices which cannot perform their function unless they are mounted on another machine or appliance or are incorporated in a more complex entity provided that this function (i) is distinct from that which is performed by the machine or appliance whereon they are to be mounted or by the entity wherein they are to be incorporated and (ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity.

47. Some of the specific appliances and apparatus, which were covered by sub-heading No. 8543.80 as per HSN Explanatory Notes, were as under: (1) Particle accelerators. These are devices for imparting high Kinetic energy to charged particles (electrons, protons, etc.).

Particle accelerators are used mainly in nuclear research but they also serve in the production of radioactive materials, in medical or industrial radiography, for the sterilisation of certain products, etc. Particle accelerators usually consist of large installations (which may weigh several thousands of tons). They comprise a particle source, an acceleration chamber, and devices for producing high frequency voltage, variations of the flux or radio-frequencies which are used to accelerate the particles. They may contain one or more targets. Acceleration, focalisation and deflection of the particles are achieved by electrostatic or electro-magnetic devices which are fed by high voltage or high frequency generators.

Accelerator and generators are often enclosed in an anti-radiation screen.

The particle accelerators covered by this heading include, Van De Graaff accelerators, Cockcroft and Walton accelerators, linear accelerators, cyclotrons, betatrons, synchrocyclotrons, synchrotrons, etc.

Betatrons and other particle accelerators specially adapted for the production of X-rays, including those capable of producing either beta-rays or gamma-rays as required, fall in heading 90.22.

(2) Signal generators. These are apparatus for the production of electrical signals, of known wave-form and magnitude, at an assignable frequency (high or low frequency, for example). These include, inter alia: impulse generators, pattern generators, wobblers (sweep generators).

(3) Mine detectors based on the change of magnetic flux produced in the apparatus when brought near to a metal object. Similar detectors are used, for example, for detecting foreign metallic bodies in casks of tobacco, food products, timber, etc., and for locating buried pipes.

(4) Mixing units, used in sound recording for combining the output from two or more microphones; they are sometimes combined with an amplifier. But mixing units specialised for cinematography are excluded (Heading 90.10).

(6) Defrosters and demisters with electric resistors for aircraft, ships, trains or other vehicles (except cycles or motor vehicles - Heading 85.12).

(7) Synchronisers for use when several generators are feeding into a common circuit.

(8) Electrical mine detonators, consisting of a hand generator (dynamo) and a capacitor.

(9) High or intermediate frequency amplifiers (including measurement amplifiers and aerial amplifiers).

(11) Ozone generating and diffusing apparatus, electric, designed for non-therapeutic purposes (e.g., for industrial uses, for the ozonisation of premises).

48. The imported I/P converters do not appear to be akin to any of the specific appliances and apparatus included within the scope of sub-heading No. 8543.80 of the Customs Tariff. From the function of the goods (pressure/temperature control of liquid or gas flowing in the pipeline as per literature and information on record) and the scheme of the Tariff, the goods in question - 1TOPO IV - UP Converters appear to be more appropriately classifiable under sub-heading No. 9032.89 of the Customs Tariff as proposed by the Id. Member (T). Accordingly, I agree with the order proposed by the Member (T).

49. In view of the majority order, the impugned goods - Converters are held to be classifiable under sub-heading No. 9032.89 of the Customs Tariff and as a result, the appeal is allowed. Ordered accordingly.

Sd/- Sd/- (S.L. Peeran) (Lajja Ram) Member (J) Dt. 20.11.1998 Member(T)

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com