

Hackbridge-hewittic and Easun Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-09-1988

Reported in : (1988)(17)ECC187

Judge : H Syiem, G Agarwal

Appellant : Hackbridge-hewittic and Easun

Respondent : Collector of Customs

Judgement :

1. These appeals concern the assessment of insulators used as transformer bushing. The goods were declared as electrical insulators or transformer condenser bushing or condenser type transformer bushing and so on. In all the cases the insulators are lead-in insulators in transformers. They are fitted and screwed on to the transformer to lead high tension conductors into it. The department and the importers who imported these goods dispute the assessment, department saying that they should be assessed under sub-heading (1) of heading 85.18/27 and the importers saying that they should be assessed under sub-head (7) of heading 85.18/27. The Appellate Collectors to a large extent arrived at the conclusion that the insulators were not assessable under sub-head (7) by contrasting electrical transmission from electrical distribution. In one order No. C3/192/1982 dated 16-5-1983, the Appellate Collector said that the bushings were insulators and the transformers on which these bushings are used as parts, are used in electrical transmission system of over 400 volts. But when the bushings are assembled with the transformer, they lose their identity as insulators but

become parts of transformers. Another Appellate Collector, in order No. C3/2220/1981 dated 16-12-1983, discussed what distribution meant. He appears to have come to the conclusion that the insulator bushings were fitted with the transformer and become part of the distribution system; hence 85.18/27(7) would not apply as it covers insulators for transmission systems.

2. The argument of the learned Counsels for the appellants/importers was mainly to show that even though the insulator bushings are fitted to the transformers, they are external fittings designed only to lead the high power transmission lines into the transformer. The transformer, according to the learned Counsels, is complete in all respects and does not need the insulator bushings to transform electrical energy. The work and function of the transformer in transforming electricity is done without any help or assistance and without the participation of the lead-in insulator bushings. It is true that the insulators are fitted on the transformer, but this is only to insulate the high tension conductors which are led into the transformer from contact with any parts of the transformer or with other conductors, or conducting material.

3. It is a mistake, submitted the counsels, to say that the transformer is a part of the distribution system or that it plays a role only in a distribution system. It is not. Its role is as a transmission device meant to receive and convert electricity and then transmit it to other receiving stations, users, consumers, etc., at the new converted pressure. These transformers play active parts in the transmission of high voltage electricity, and, therefore, the insulator bushings would be entitled to be categorised as insulators used in assessment (sic) systems of 400 volts and above. The fact that the insulator bushing is fitted into the transformer should not obscure the fact that it is a transmission insulator that insulates a transmission line that brings high energy electricity.

4. The learned Counsels referred to 1984 ECR 1595 (CEGAT) re: M/s. Emco Transformers, Bombay and said that in this case the Tribunal ordered assessment of the transformer bushing under 85.18/27(1) only because the assessee did not urge or claim assessment under 85.18/27(7) as the best heading. Therefore, this ruling will not work against their claim.

5. They next quoted order No. 402/84-B re: M/s. Automatic Electric Ltd. In this case, a consignment of porcelain bushings/insulators 220 KV was imported and, assessment claimed under heading 85.18/27 (7); but assessment was made under sub-heading (1). The Tribunal came to the conclusion that the proper assessment was under heading 85.18/27(7).

Mr. Srinivasan said he would strongly rely on this judgment as it totally supports their case that their insulator bushings are assessable under sub-head(7) of heading 85.18/27.

Tribunal Bench of five members decided against assessment under sub-item (7), because the Bench found that the insulators had to be fitted in the circuit breaker and then used in the electrical system.

Sub-item(7) was only an alternative claim for classification, the main dispute being between sub-heading(1) and sub-heading (3); as such this decision cannot be said to be a decision against assessment of the present insulators under sub-heading (7).

7. The counsels said that there is a contradiction in the orders in appeal, because at places it is said by the department that insulators are not parts of the transformers, but they are denied assessment under (7) because they are parts of the transformer. The department did not seem to know its mind and have made the assessment only because sub-heading (1) brings a larger revenue. The merits would clearly point to sub-heading (7) as the most appropriate and most specific for the goods in all respects.

8. The learned SDR countered every argument of the assessee by pointing out that all the bills of entry and invoices described the goods as transformer bushings non-re-entry type. There was, in fact, a plea by the importers that the goods could go under sub-heading (1). He read heading 85.18/27, pointing out that one of the goods listed in the heading is insulators of any materials. He read note 2 of Section XVI of the Tariff. He next read from the McGraw Hill Encyclopaedia of Science and Technology the meaning of electric power sub-station.

9. Most of all, the learned SDR argued that the goods must be assessed as they are when they are imported. At the time that these goods were imported, they were insulator bushings for use in transformers. They were imported for transformers, and even if the transformer was to be used in transmission, that was only an end use, a post-importation use, a fact into which the Tribunal cannot enquire. The time of the importation alone is relevant for the purpose of assessment; and at the time of importation the goods were only bushings/insulators for transformers. Therefore, we cannot look beyond the goods to see that they are to be used in transmission or in distribution.

10. The Counsel for the importers M/s. Hackbridge replied that the bushings may be meant for use with transformers but they are not part of the transformers. This is a very significant difference, because as already argued, the transformers do not need these insulators/bushings to function. The insulators are only to allow the transmission wire to be brought into the transformer without damaging it. It insulates the line that comes to the transformer, but does not form part of the transformer. The Emco decision records that various electricity Boards insist that the transformers be supplied with bushings as terminal arrangement. If the insulator bushings are parts of transformers, there is no need to make this stipulation; the transformers would automatically have the bushings incorporated. There is no need to know how the insulator is to be used; at the time of import it could be seen clearly as an insulator.

11. There has been a digression in the discussion when the Collectors (Appeals) examined whether these bushings/insulators were part of transmission systems or of distribution systems; nor was there any relevance in settling a question that distribution is different from transmission. The debate is like the debate about the hen and the egg to find which came first. It is enough to say that there can be no distribution without transmission and there can be no transmission without distribution. Transmission itself is nothing but distribution of electricity and to see a line of division between the two is to raise a wall between performances that cannot be divided and which are, in large measure, indivisible. A simple sketch of the steps in the generation, transmission and distribution of electricity from the McGraw Hill Encyclopaedia printed below will clarify this point (Diagram not

reproduced here--Ed.): It can be noticed that after the first voltage reduction to supply electricity to the industrial consumer at 23-138 KV, the electricity is transmitted/distributed to a second voltage reduction transformer with an AC/DC converter for further distribution to a sub-station to other commercial/industrial customers, and from there to other commercial customers, and then, after one last transformation to 120/240 volts, to residential customers. What was a high voltage transmission distribution to the industrial consumer is transmitted and transformed, after further voltage reduction, at low voltage to lower voltage consumers. At the end we have the last voltage distribution/transmission at 220 volts to households. Every transmission, from the highest pressure to the lowest, involves a distribution to the target customer/area, and after further transmission, to another establishment at a lower voltage.

12. When this is a case, we are confronted by the problem of what would qualify to be called an insulator designed for use in an electrical transmission system 400 volts and above. Everybody knows what an insulator is; everybody knows what an electrical transmission system is and everybody knows what 400 volts and above mean. If it is to cover an insulator that leads in high voltage electricity into a transformer, then a description insulator designed for use in equipment apparatus, machine of 400 volts and above would have been sufficient and would have been easier to operate. Since insulators insulate and since stronger, larger, more resistant insulators are needed for very high voltages, it does not add to one's understanding if the insulators are circumscribed by definitions that place them out of the area of certain uses.

13. The CCCN has a heading for insulating fittings for electrical machines, appliances or equipment and another for insulators of any material. A good understanding can be gained from reading these two headings of this authoritative work. Under Insulators of any material (85.25), are grouped insulators like suspension insulators, rigid insulators and leading-in insulators for guiding cables and wires through walls. Most of these insulators are used mainly on outdoor works, the conductor cable being fixed at the bottom of the assembly.

14. In the other heading Insulating fittings for electrical machines, appliances or equipment (85.26), are fittings to appliances, machinery.

A transformer is described as an electrical device without any moving parts, which transfers energy of an alternating current in the primary winding to that in one or more secondary winding, through electromagnetic induction (Chambers Dictionary of Science and Technology). It is an assembly of two or more windings. An equipment is defined in engineering as one or more assemblies capable of performing a complete function (Mcgraw Hill Dictionary of Scientific and Technical Terms). This head of the CCCN treats fittings in appliances and equipments different from other insulators used as mounts for current carrying conductors.

15. Therefore, if the tariff, instead of merely providing for insulators, provides for insulators designed for use in an electrical transmission system of 400 volts and above, it appears to me that it (Tariff) wants to put under the subhead (7) only those insulators bearing high voltage conductors as part of the outdoor transmission cable network. There is a strong case for saying that the insulator fitted on a transformer as a lead-in bush is also an outdoor insulator used as part of the transmission system. But there is a stronger one for saying that an insulator for a transmission system is an insulator that is not a fitting principally of an equipment like a transformer, but an insulator used in outdoor works as rest, mount, support for high power line carrying cables. The necessary aim, in my view, clearly is not an insulator bushing that functions as a protecting fitting for a transformer even if it is a part of the transmission in an outdoor system. The insulator bushes imported now are first of all. to be fitted to a transformer as a fitting. Such fittings may not be a part of the transformer as correctly argued on behalf of the importers; but they are protecting fittings without which the transformer cannot receive the high pressure electricity carrying conductor without damage to itself. That they may be part of the transmission system does not need to be seriously contradicted, because in a transmission-distribution system of electricity there is always the hazy area in which the two merge into one another. As a matter of fact, I would go much further and say that even though many authorities write about transmission and about distribution, they do not make a clear cut division between the two but merely in an exegetical basis for describing

the work and the mechanics involved. For example to describe the generation and the carriage of the electricity from the power station to the first receiving transformer, it is convenient to describe it as a transmission. But it is equally true to call it a distribution, since the power generated by the primary generator is distributed to the first transformer, from where it is eventually distributed and/or transmitted. To transmit is not less than to distribute, even when we remember that transmission is more often associated with a single lane carriage from one point to another, whereas distribution usually involves a number of points receiving from one distributing point; but let it not be forgotten that each travel from the single point to the many points of receipt involves transmission of electricity.

16. I hold the opinion that the Indian tariff employs the language that it does in sub-head (7) of heading 85.18/27, because it wants to assess under this head only those insulators, bushings, used in systems of 400 volts and over in transmission lines used for carriage of high transmission power lines and slung on the electrical towers that we see in the open. The item wants to cover only those insulators used in the outdoor transmission only as supports for the conducting lines at fixed points as the lines travel over distances, eventually till they arrive at a point from which the power is taken for further use, or for further transformation, etc., and for distribution. It is not meant to cover for bushings, which, though part of the overall transmission system, are insulators that are meant to protect equipments and other devices by insulating the high power line led into the apparatus, device, equipment, etc.," and which during such use are fitted not so much as mounts, rests, supports, for the power line as insulators to insulate the equipment/device and the power line from each other. It is not meant for insulators and bushings which are at the receiving end of a transmission even if the receiving end is used in further transmission after conversion/transformation of the energy. Above all, the sub-heading is not meant for insulators and bushings used principally or even partly as fittings to a functioning or working apparatus or equipment, even if the insulation fitting is not essential to the working of that equipment, apparatus.

17. In these circumstances, assessment under sub-heading (7) of heading 85.18/27 is not appropriate. That leaves only one heading which can accept these insulating fittings and that is sub-heading (1) of the same heading and I rule

accordingly.

18. The cases quoted on behalf of the importers will be discussed briefly. We have seen that the Emco Transformer judgment of the Tribunal offers no support to the importers, because the assessment was decided by the bench under sub-head (1). In the Voltas Ltd. judgement of the Tribunal, the decision was again under sub-heading (1) and so this does not strengthen their case. It is order No. 402/84-B1 Automatic Electric Ltd. that the learned Counsel for the importers said they rely completely upon. The type of goods in that case is not clear.

It is recorded only that the insulators are designed for use in an electrical transmission system of 400 volts or above and these bushings are used with voltage current type of transformer which are, in fact, part of transmission system and without which it cannot be considered as complete.

In the suppliers' invoices the goods are said to be described as "porcelain bushings/insulators brown glazed porcelain insulators for 220 KV instrument transformers, suitable for normal polluted atmosphere." The order narrates that the insulators are used in the current transformers manufactured by the appellants and are necessary near each end of the transmission line for measurement and protection of the transmission system. The Bench wrote that the department's contention that it was not an insulator used in transmission system was not acceptable. It appears from the order that the insulators decided upon by the Tribunal in the Automatic Electric Ltd. case were not insulator lead-in fittings/ bushes for transformers as in our present case.

19. We will also show a picture here of the general design of the insulator as imported, and when it is fitted in position Diagram not reproduced here--Ed.

From a description of the insulator it is clear that this bushing is not an ordinary supporting bushing but is specially constructed with a metal core with terminals for contact with the high tension wire. In GENERAL DESIGN the illustrated paper says that the active part of the bushing consists of the synthetic resin bonded paper core with condenser layers for field control. The core is directly wound on to the central metallic supporting tube. In FIXING THE CONDUCTOR the paper

explains that items 1-6 are used for drawing-in and securing the conductor.

20. In head design, according to figure 7, the cable is soldered into the cable bolt 2 which is supplied undrilled. (Other parts are not described as they are not necessary for this discussion.) It is, therefore, strictly speaking, a fitting for the transformer and once fitted, the high power transmission line will be coupled, soldered, etc., to the end terminal above the bushing. It is not a case of the high tension wire being inserted through the central cavity in the insulator/bushing into the transformer; the bushing and its metal terminal mechanically speaking act as an extension of the transformer system whereby contact between the high power transmission line and the transformer functioning parts is completed by means of the insulator.

To that extent, therefore, the Appellate Collectors were not incorrect when they saw this as a part of transformer. I see it as a component, a device whose utility is not in the transmission system but in the reception of transmitted power to provide a path to lead it into the transformer without damage to the latter.

21. The pictures illustrate what the bushings/insulators do. The high tension wire is led into the transformer through the insulator fitted to the latter, the insulator providing a safe path free from contact with other parts to feed the coils. The insulator allows the high current ingress into the device; it is the inlet, and a necessary complement to the equipment. One can see the function is not transmission or as part of a transmission line or system, but a component or a part that insulates, protects, that provides a pathway for the high voltage power to enter the transformer. It plays a part that relates less to transmission and more to guiding a line into the transformer and to protecting it.

22. The judgment in the Automatic Electric judgment said that the insulators were necessary near each end of the transmission line for measurement and protection of the transmission systems. The Tribunal appears to have concluded that the insulators were for transmission systems and, accordingly, the insulators must be assessed under 85.18/27(7). And we are in agreement. But the judgment has no application to this dispute.

23. Goods that fall in sub-item (7) must not conduct or have any conducting component built into them. As the CCCN develops the nomenclature grouping description, they must be for fixing, supporting or guiding of electric conductors while at the same time insulating them electrically from each other, from earth, etc. They are in an assembly of transmission lines all strung together from a tower or a post, and all insulated from one another and guided to the next tower or post. In this way, they are repeated every few metres or other intervals.

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