Bhel Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-13-1988

Reported in : (1989)(39)ELT53TriDel

Appellant : Bhel

Respondent : Collector of Customs

Judgement :

1.Since a common question is involved in all these appeals a common order is being passed.

2. Question involved is whether the Flame Sensing System and the component parts thereto are to be classified under CTA Heading 85.17 as has been done by the department or 90.28(4) read with 90.25(1) as claimed by the assessee, the appellant herein. Alternative claim of the assessee is if the aforesaid claim of classification of the goods under Chapter 90 of the CTA 1975 is not accepted then the goods should be classified under CTA Heading 85.18/27. Learned consultant Shri N.C.Sogani has urged that the Flame Sensing System is nothing but an instrument or apparatus for measuring the intensity of a flame in the furnace. This system continuously monitors the intensity of the flame in the furnace and when the flame of burners in furnace goes below the desired value a signal is provided by the system which with the help of further relays trips off the fuel supply to the furnace and thereby prevents an imminent explosion therein.

3. Relying upon a technical write-up by the appellants' Manager, Control and Instrumentation and the manual for "C-E Flame Sensing System Series 510" of Combustion Engineering Inc. the suppliers of the goods in the instant case, the learned Consultant has urged as follows: "The CE Series 510 Flame Scanner is a wide angle optical flame sensing device specifically designed for Hydrocarbon Fuels such as Coal, Oil and Gas or combinations thereof. Sensitive only to a wide band UV Radiations peculiar to hydrocarbon combustion, the Flame Scanner will not respond to radiation from hot refractory or slag.

The complete mechanical assembly is composed of a stationary part and a removable part called respectively the Flame Scanner Guide Pipe Assembly and the Flame Scanner Head Assembly....

1. Power Supply Module: Incoming AC Power 95-132 VAC, 47-63 HZ is the Power source for the electronics, the Scanner tube and the Shutter Mechanism.

2. Flame Detector Modules: Consist of Transmitter Modules (4 Nos.), Receiver Modules (4 Nos.), Output Module (One 2/4 Summing) and Individual Output Modules (4 Nos.) The 2/4 Summing Module receives logic level inputs ("Flame" or "No Flame") from each of the 4 Receiver Modules and performs a summing operation. The 2/4 Summing Module will indicate "Flame" only when atleast two out of four Scanners see Flame. When less than two Scanners see Flame the system will indicate "No Flame".

Flame Scanner is an Automatic Control Device which consists of a primary detector which senses the UV radiation converting to electrical pulses which in turn are analysed by the Flame Sensing System by comparing these pulses with the Standard threshold time between pulses. The threshold level is the time lapse between two pulses which should not exceed 2 seconds. If the Flame is strong, the interval may be as little as 0.5 second or even less. If it is very weak, the interval can exceed 2 seconds between 2 pulses.

In case the interval exceeds 2 seconds, the Flame Sensing System automatically diagnoses this as a fault (No Flame). This signal is computed in 2/4 Summing Module where it is further analysed whether minimum two of the four Scanners

see Flame. If this minimum is not achieved, then the sensing system gives out an output of "No Flame" which is transmitted to the FSSS logic to trip the Boiler. This tripping action is automatic and is not operator initiated in view of very short reaction time for manual intervention.

The Flame Scanner performs the functions of a Detector, and analyses, computes and acts automatically as described above.

A free running multivibrator whose frequency is adjusted to approximately 4. 1K Hz provides the pulses to be counted by the 14 bit ripple counter.

Three light emitting diodes (LE.D.'s) are provided on the receiver module. There are identified as "Flame", "1/2 Time" and "1/4 Time".

The "Flame" LE.D. is lit whenever this module has a flame output. It indicates that flame pulses are being received at a rate greater than one every 2 seconds. The "1/2 Time" LE.D., when lit, indicates that 1 second has expired since receiving the last flame pulse. The "1/4 Time" LE.D., when lit, (at which time the "1/2 Time" will turn off) indicates that 1.5 seconds has expired since receiving the last flame pulse. With a time interval between flame pulses of greater than 2 seconds, the "1/2 Time" LE.D. will turn on 1 second after a pulse. The "1/2 Time" LE.D. remain on for .5 seconds at which time the"1/4 Time" LE.D. will turn on. The "1/4 Time" LE.D. will remain on for .5 seconds, and when it turns off the "Flame" L.E.D. will also turn off. Two pulses with a time interval between pulses of less than 2 seconds are required to restore the "Flame" indication.

3.1 The learned Consultant further urges that "electric sound or visual signalling apparatus" referred to in CTA heading 85.17 merely detects a particular phenomenon and gives an alarm or signal about the existence of that phenomenon, it does not measure that phenmenon. This is apparent from the Explanatory Notes to CCCN under Chapter 85.17 at page 1442, for example in Section (E) and (F) pertaining to burglar alarms and fire alarms it has been stated that these consist of two parts: a detecting part, and a signalling part (bell, buzzer, visual indicator, etc.) which is set off automatically when the detecting part operates....

Inviting attention to Sub-para (5) of Section (F) pertaining to Fire alarm, learned Consultant has drawn attention to 'Flame Detector' described therein. The Flame Detector falling under CTA heading 85.17, according to these Explanatory Notes, incorporates a photoelectric cell which operates alarm through a relay when the flame lights or goes out.

Detector not incorporating electric sound or visual alarm devices are classified in heading 85.19 according to the Explanatory Notes. The learned consultant states that Flame Sensing System is different from the Flame Detector mentioned at page 1442 of the Explanatory Notes because the system incorporates, apart from the detection of flame, the equipment for continuous monitoring and measuring of the intensity of the flame; only when the intensity goes below a certain level the system gives a signal of "No Flame". The level of "No Flame" according to the Flame Scanning System is not the level of Zero Flame. According to the learned Consultant their apparatus in akin to 'electronic smoke detector' referred to at page 1638 of the Explanatory Notes under Chapter 90, heading 90.28. On the basis of classification of 'Electronic smoke detector' the learned Consultant urges their Flame Sensing System should also be classified under heading 90.28.

4. Learned Consultant has further urged that two recent orders passed by the Collector (Appeals), Madras appended in the paper book at pages 93 to 100 pertaining to appeals No. C-3/1232, 1234/1987 dated 29-1-88 and C-3/203 and 306/1988 dated 10-5-88 in their own cases hold the classification of Flame Sensing System under Chapter 90. It is, therefore, urged that appeals be allowed with consequential relief to them.

5. Regarding classification of an item 'lens' in appeal No. C/2031/88 the learned Consultant urges that they concede stand of the department that it is classifiable under CTA heading 90.01 and they do not press for their claim for its assessment under CTA heading 90.02 read with 90.28(4).

6. Opposing the contention of the appellants the learned SDR Shri ASR Nair reiterates the findings of the lower appellate authority. He urges that apparatus under con-sidration merely senses the flame i.e. detects the flame. It does not measure or check intensity of the flame. He further points out that Flame Detector

specifically mentioned at page 1442 of the Explanatory Notes as already mentioned above falls under CTA heading 85.17. He submits that although there is no photoelectric cell in the apparatus under consideration, however the function is the same as that of a Flame Detector referred to at page 1442 of the Explanatory Notes. He further submits that a measuring instrument has to specifically measure the value of a desired parameter. No such thing is done in the instant case. He further urges that function of an automatic controlling instrument is to maintain a quantity at a desired value or within a desired range and stabilising it against disturbances by constantly measuring its actual value. The apparatus imported by the appellants does not do any such function. He, therefore, urges that the appeals deserve to be dismissed in view of the very detailed discussion and findings in common order in appeal pertaining to these impugned in the bunch of six appeals 2031 to 2036/88.

7. Replying, the learned Consultant emphasises again that the apparatus Flame Sensing System does the job of continuously measuring and checking intensity of the flame. He invites attention to page 40 of the manual of the supplier referred to above. It is very clearly stated there, urges the learned Consultant, that "A free running multivibrator whose frequency is adjusted to approximately 4.1K Hz provides the pulses to be counted by the 14 bit ripple counter".

8. We have carefully considered the pleas advanced on both sides. Two competing entries for classification of goods under consideration are CTA heading 85.17 and CTA heading 90.28 (4) read with 90.25. In order to appreciate the opposing contentions it is proper to reproduce the two entries.

85.17 Electric sound or visual signalling apparatus (such as bells, sirens, indicator panels, burglar and fire alarms), other than those of Heading No. 85.09 or 85.16 90.28 Electrical measuring, checking, analysing or automatically controlling instruments and apparatus: (4) Electrical instruments and apparatus, the non-electric counterparts of which fall under Heading Nos. 90.14 to 90.16,90.22 to 90.25 or 90.27".

8.1 It is common knowledge that the Customs Tariff, 1975 (as it stood before 1 -3-75) was largely based on Customs Co-operation Council Nomenclature (CCCN).

Therefore, Explanatory Notes to CCCN provide a useful clue to the entries in the Customs Tariff Act although they do not form part of the tariff itself. The said Explanatory Notes pertaining to this heading (85.17) are as follows: "With the exception of signalling apparatus used on cycles or motor vehicles (heading 85.09) and that for traffic control on roads, railways, etc. (heading 85.16), this heading covers all electrical apparatus used for signalling purposes, whether using sound for the transmission of the signal (bells, buzzers, hooters, etc.) or using visual indication (lamps, flaps, illuminated numbers, etc.) and whether operated by hand (e.g. door bells) or automatically (e.g., burglar alarms)." (C) Other electrical signalling apparatus (winking or intermittent lights, etc.) for aircraft, ships, trains or other vehicles.

(D) Indicator panels and the like, for calling personnel, indicating where a certain person or service is required, etc.

9. Explanatory Notes also provide that alarm consists of two parts, a detecting part and a signalling part. In the section relating to fire alarm, 'flame detector' has been specifically included but these flame detectors, it is apparent, do not perform the job of measuirng the intensity of the flame. The flame detector included in heading CTA 85.17 operates the alarm through relay when the flame lights or goes out. This Explanatory Note pertaining to 'flame detector' at page 1442 also states that detecting part not incorporating electric sound or visual devices are classified in heading 85.19. The department relies very strongly on Notes pertaining to the 'flame detector'. Their contention is that since the apparatus under consideration incorporate visual alarm device, or visual warning system, therefore, it should be assessed under CTA heading 85.17. We do not agree with this reasoning of the Revenue, in view of the earlier notes pertaining to these categories of devices that these consist of two parts namely a detecting part and a signalling part. The apparatus under consideration does not merely have a detecting part and the signalling part, but it also incorporates the measuring equipment by way of "14 bit ripple counter". We, therefore, feel that the heading 85.17 is not the correct heading for classification of the flame sensing system.

10. On the other hand we find substantial force in the argument of the appellants' learned Consultant. No doubt, the system in its broad sense is a warning system for preventing explosion in the boiler or furnace thereto yet this particular system i.e. flame sensing system is an apparatus for measuirng the intensity of flame via ultra voilet rays radiated by flame. If the intensity of the flame goes down below a certain level the system gives the warning of that and sets in reaction certain relays which trips off the fuel supply to system. This is very clear from the extract of the manual of the supplier set out above; only when the electrical pulses have interval of time greater than 2 seconds which Is considered to be the dangerous level, the automatic tripping system operates shutting off fuel supply to the boiler. We, therefore, allow the appeals with consequential relief to the appellants.

11. In so far as assessment of lens in appeal No. C/2031 is concerned, we reject the appeal in respect of that item i.e. lens as not pressed.