Filtronics Ltd. Vs. Collector of C.Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-15-1989

Reported in : (1991)LC225Tri(Delhi)

Appellant : Filtronics Ltd.

Respondent : Collector of C.Ex.

Judgement :

1. This is an appeal against the order of Collector of Central Excise (Appeals), Bombay. Brief facts of the case are that the appellants manufacture, among other items, R.F. inductors, chokes, peaking coils and AM/FM Transformers and MW/SW Oscillator coils and antenna coils and RF/IF coils.

2. The appellants, before the Assistant Collector, claimed the assessment of the goods under Tariff Heading 8529.00. While the Revenue in the proceedings, before us, want the goods to be assessed under Tariff heading 8504.00 CET. The two Tariff Headings, for convenience of reference are reproduced below : "8504.00 - Electrical transformers, static converters (for example,- 20% rectifiers) and inductors.

"8529.00 - Parts suitable for use solely or principally with the ap- 15% paratus of heading Nos. 85.25 to 85.28 3. The appellants filed a classification list effective from 1-3-1986 in respect of the following four items : 4. Seeking approval of the classification for all the items under Tariff Heading 8529.00. The same, it is seen, was approved by the Assistant Collector by an endorsement dated 20-3-1986.

Lateron, however, a show cause notice dated 4-6-1987 was issued by the Superintendent of Central Excise wherein it was alleged that the appellants have mis-classified their products in their classification list effective from 1-3-1986 by seeking approval under Heading 8529.00 for a payment of duty @ 15% ad valorem when the goods fell under the specific heading 8504.00 answering to the description of items under that heading and were assessable to 20% ad valorem. They were stated to have contravene Rules 173F and 173G(I) of the Central Excise Rules 1944 for their failure to have discharged the duty under Tariff Heading 8504.00. The differential duty demand of Rs. 2,78,713.25P. for the period from December, 86 to May, 87 was made.

5. The appellants took the following main pleas before the Assistant Collector to show that their products differs from the products specified under the tariff heading 8504.00: "The function of the Coils manufactured by the assessee totally differs from that of Electrical Transformers, Static Invertors and inductors in following respects: i. IF Coils are tuned with a specific value of built in or external capacitor for passing of specific/frequency and to attenuated all others. Electricakrans-formers, Static Invertors and Inductors do not function in this manner; ii. Function of MW/SW Oscillator Coils is to generate a local frequency and mix the incoming aerial frequency and produce a resultant intermediate frequency signal. No Electrical Transformer or Inductor will function in this manner; iii. The function of aerial coil is to receive signal from the atmosphere of a frequency as determined by the coil and the variable gang capacitor used alongwith it and feed the signal to the Oscillator circuit. One end of the Aerial Coil is either connected to the external aerial or left unconnected. Electrical Transformers or Inductors do not function in this manner; iv. Our Peaking Coils, Chokes or Inductors are Coils when used with a combination of capacitors in parallel series or net-work, function as a filter coil to attenuate or trap certain bad of frequencies and permit others to pass, Electrical Transformers or Inductors cannot be used in this manner.

v. Our Coils do not resemble in form or use Electrical Transformers, Static Invertors, Inductors, etc. nor can they operate at normal power line frequencies.

They also produced 17 documents containing copies of letters and certificates from various Central Government Agencies and Departmental Consultants in Electronic goods in support of their pleas. They maintained before the adjudicating authority that the goods manufactured by them and as set out in the classification list were assessable only under Tariff Heading 8529.00.

6. The Assistant Collector, after taking their pleas into account gave his findings on the specific pleas made by the appellant as under : "At the outset it may be stated that there is no distinction between an Electrical transformer and Electronic transfer. Transformer as is understood technically is a device, which by electro magnetic induction transforms electrical alternating or intermittent energy from one or more circuits to one or more other circuits at the same frequency, usually with changed value of voltage and current. Auto transformer, constant current, constant-potential, coupling, current, doorknob, filament, instrument, intermediate frequency, Modulation, Output, Peaking, Power, Primary winding, Pulse, Radio frequency, Rectifier, Repeating Coil, step-down, step up, Tesla Coil, Ideal, Tuned, Variac, Variocouples, Wave guide, are also different types of transformers as defined in the dictionary of Electronics, 3rd Edition, by S. Handel. (Penguin ELBS Publication) Intermediate Frequency transformer is designed for use in an intermediate frequency Amplifier i.e. fixed tuned amplifier between the first and second detectors in a super-haterodyne receiver.

Transformer is an apparatus which transforms by means of induction and using a preset or adjustiable system, an alternating current, into another alternating current of different voltage, impedance etc. These usually consist of two or more coils of insulated wire wound on laminated Iron cores. Although in some cases for example Radio Frequency transformers, there may be core of ferrite, or no core at all. Heading No. 8504.00 covers all transformers they vary from small type, used in wireless sets, instruments, toys, etc. to large types of transformers enclosed in Oil tanks, or equipped with Radiators, fans etc. for cooling purposes. This heading also covers induction coils, a kind of transformer in which an intermittant of fluctuating direct current in the primary induces a corresponding current in the secondary. They can be used in the case of telephony to reproduce in the secondary circuit a small fluctuating current corresponding to the fluctuation

imposed on a steady D.C. in the primary. This heading covers induction coils, of all kinds, other than ignition equipment for I.C. Engines." 7. So far as the certificates, etc. produced by the appellants, the learned Assistant Collector did not accept the same as evidence in support of appellants' pleas and his reasons for the same are set out as under : "The certificates of various Central Government Agencies and Departments, consultants in Electronics and other manufacturers of transformers cannot be relied as they have opined about the classification of assessees products under Sub-heading 8529.00, only because they are generally used in Radios/T.Vs and other electronic communication equipments and no specific discussion is made with reference to the description given in the Sub-Heading No. 8504.00 in CET Act, 1985, and on the provisions of Rule 3(a) of Rules for Interpretation of the Schedule to the Central Excises and Salt Act, 1944 which emphasises that specific description is to be preferred to a more general description." 8. The appellants also took the pleas before the adjudicating authorities that having approved the classification list, no demand could be raised by him and his findings in this regard are as under : "It is true that the classification list effective from 1-3-1986 was already approved, but the principles of Res judicata are not applicable to the Quasi-judicial proceedings. The assessee have not disclosed the correct classification of his product, taking into account the Rules of Interpretation and the function of sound coils which are "transfomers" in the technical sense of the term and the "inductors" which find a specific entry in Sub-Heading 8504.00. The assessee has misguided the department by suppressing the vital information, required to be disclosed by the assessee. To think this extent it appears that there is a suppression of facts on the part of the assessee. The demand for differential Central Excise duty is required to be re-worked out on the basis of classification of assessee's products as held in this order." 9. The Assistant Collector confirmed the duty demand in terms of the Show Cause Notice. The appellants, thereafter, filed an appeal before the Collector of Central Excise (Appeals), Bombay. The Collector (Appeals) confirmed the findings of the Assistant Collector holding that the goods answered to the specific description of the items set out under Tariff Heading 8504.00.

10. The learned Consultant, for the appellants, was assisted by Shri M.Dayal, Proprietor, who informed, on a query from the Bench, that he was B.Sc. in

Electronics from London University and during the course of the arguments, he explained various technical aspects relating to the goods. The learned Consultant pleaded that the appellants have not suppressed any fact and describe the same as marked. He pleaded that the classification list was approved after due verification and pleaded that changed classification as held by the Assistant Collector should have only prospective effect and he cited in this context, the judgment of the Hon'ble Supreme Court in the case of Collector of Customs and Central Excise and Anr. v. Oriental Timber Industries reported in 1985 (20) E.L.T. 202 (S.C.). With reference to a judgment of the Hon'ble Supreme Court, it was pointed out to him that in that case, the Hon'ble Supreme Court held that in that particular case no demand should be raised for the past period. He, further, pleaded that the Assistant Collector, while coming to the conclusions had resorted to the dictionary meanings of the items as set out in his order which was not correct. He cited in this context the judgments of the Hon'ble Supreme Court reported in 1983 (13) E.L.T. 1607 in the case of Porritis & Spencer (ASIA) Ltd. v. State of Haryana and the judgment of the Hon'ble High Court of Bombay reported in 1985 (20) E.L.T. 70 (Bom.) in the case of Leukoplast (India) Private Ltd. v. Union of India. He, further, pleaded that even if the goods were held to be assessable under Tariff Heading 8504.00, the benefit of exemption of Notification No. 160/86 dated 1-3-1986 for levy of duty @ 15% in respect of inductors would be available and which has not been granted by the Assistant Collector.

11. Coming to the different types of the products, manufactured by the & appellants, the proprietor of the firm Shri Dayal explained that various items for making the products are copper wire, Ferrite core, coil former and for getting the desired effect capacitors etc. were linked externally in the circuit to the products manufactured.

12. On a query from the Bench, he stated that so far as the capacitors are concerned, they were fitted generally outside the coils. So far as the antenna coils, medium wave and shorter wave coils. If transformers coils or IF coils or IF convertors were concerned, he pleaded that the same were generally required for the radios and each one of them essentially comprised of the primary coil and a secondary coil wound around the ferrite core to produce necessary frequency

changes, etc. He pleaded that some of the coils were used singly as an inductance in the circuits and these could be called as inductors. He pleaded that most of the single coils were used in the television circuits. He showed, with the help of the literature as to where each type of the coil was used. The appellants pleaded that the term 'transformer' as generally understood, referred to transformers in the electricity supply lines.

13. In this connection, he drew our attention to the definition of the transformer as given in book - Electronic Communication by Robbert L.

Shrader, McGraw-Hill Book Company at heading 5.15. The said definition is reproduced below for convenience of reference: "TRANSFORMERS - One of the common components, or parts, used in electricity, electronics, and radio is the transformer. The name itself indicates that the device is used to transform, or change, something. In practice a transformer, may be used to step up or step down voltages, to change low-voltage high-current AC to high-voltage low-current AC, or vice versa, or to change the impedance of a circuit to some other impedance in order to transfer energy better from a source to a load.

In its simplest form, a transformer consists of a primary wire and a secondary wire laid side by side (Fig. 5-17). The only parts of the primary and secondary circuits to be considered are the portions lying parallel to each other." 14. In regard to coils manufactured by the appellants, he drew our attention to the description of the same under Heading 8.2, which is reproduced below for convenience of reference: "Tuned transformers are used in radio receivers, transmitters, and electronic circuits to select a desired frequency when many frequencies may be present. Figure 8-6 shows an antenna connected to Fig. 8-6. A resonant circuit accepts signals at its resonant frequency but rejects all others, the primary of a transformer." 15. In regard to the medium wave and short wave and I.F. coils, he drew our attention to the diagram marked at 13.12 in the extract from the book Electronic Fundamentals and Applications by John D. Ryder and pointed out that it comprises of a coil given on a ferrite and stated that it has a primary and a secondary windings. In regard to I.F. coils he stated that no doubt in the book by Robert L. Sharder referred to also under para 8-7, these are described as

transformers. In para 8-8, these have however been described as bandpass-filters.

16. The learned Proprietor also drew our attention to the book The J&P Transformer Book by S. Austen Stigant C. Eng. and A.C. Franklin, London Newnes-Butter-worths and stated the scope of the transformers should be taken to be as described in that book and drew our attention to a para,'which is reproduced below for convenience of reference: "As is generally known, a transformer consists of a magnetic core built up of insulated silicon steel laminations upon which are wound two distinct sets of coils suitably located with respect to each other and termed the primary and secondary windings respectively.

Such a combination maybe used to derive a voltage higher or lower than that immediately available, and in the former case the transformer is termed a step-up transformer, while in the latter it is termed a step-down type. The primary winding is that winding to which the supply voltage is applied irrespective of whether it is the higher or lower-voltage winding; the other winding to which the load is directly connected is termed the secondary winding." 17. He, further, drew our attention to the terminology used in ISI 1982, extracts of which he has filed in his paper book.

18. Incidentally, the proprietor of the firm stated that he was a member of a committee which formulated this ISI. He drew our attention to para 2.9 as to what constituted in IF Transformer, the same, for convenience of reference, is reproduced below: "Intermediate Frequency Transformer - It consists of two or more windings designed to pass a specific band of radio frequencies which results from heterodyning a local oscillator signal with a radio frequency signal." 19. He also drew our attention to para 2.4 to show as to what was understood under the ISI by the term 'inductor', the same also, for convenience of reference, is reproduced below: "Inductor (Coils) - An electromagnetic device consisting of a conductor wound in cylinderical or spiral form, or in a variation of these forms, to obtain a concentrated magnetic field parallel to the exis of the coil." 20. The appellants pleaded that even though the coils were described as transformers or inductors, it was a term used and this could not be considered to be so for the purpose of assessment under Tariff Heading 8504.00.

21.' The learned Consultant pleaded that the goods were supplied to the manufacturers by the appellants and in case they have been asked to pay duty right at the very outset, then the modvat concession would have been claimed by the buyers and the appellants also would have collected the duty from them. He pleaded that demands could not be raised in any case on items other than which could be considered as transformers and if that was done, a duty demand would be only Rs. 17,202.25 as inductors which had been charged by the lower authorities the duty @ 20% can be charged duty only @ 15% under Notification 160/86. He, further, pleaded that demand in any case also could not have been raised beyond a period of six months.

22. The learned SDR, for the department, right at the very outset, pleaded as to what scope of the term 'transformer'. He, in this connection, drew our attention to the Encyclopedia of Electronics and Computers by Sybil P. Parker, McGraw Hill Book Co. and drew our attention to the heading Transformer figured at page 857 (the extract from the book filed). The said para is reproduced below for convenience of reference : "Transformer - An electrical component used to transfer electric energy from one alternating current (ac) circuit to another by magnetic compiling. Essentiality, it consists of two or more multi-turn coils of wire placed in close proximity to cause the magnetic field of one to link the other. In general, the transformer accomplishes one or more of the following between two circuits; (1) a difference in voltage magnitude, (2) a difference in current magnitude, (3) a difference in phase angle, (4) a difference in impedance level, and (5) a difference in voltage insulation level, either between the two circuits or to ground.

Transformers are used to meet a wide range of requirements.

Pole-type distribution transformers supply relatively small amounts of power to residences. Power transformers are used at generating stations to step up the generated voltage to high levels for transmission. The transmission voltage are then stepped down by transformers at the sub-stations for local distribution. Instrument transformers are used to measure voltage and currents accurately.

Audio and video-frequency transformers must function over a broad band of frequencies. Radio-frequency transformers transfer energy in narrow frequency bands from one circuit to another.

Transformers are often classified according to the frequency for which they are designed. Power transformers are for power frequency circuits, audio transformers for audio-frequency circuits, and so forth. Of course, many of the basic principles of operation apply to all." 23. He also stated that it could be seen from the literature with the appellants (which has been reproduced above in the earlier paras) that types of the goods manufactured by the appellants were described in the literature as transformers. He pleaded that entry 8504.00 used technical terminology and there it ought to be read in the context of how the people in the technical field understood the same. In this connection, he drew our attention to the judgment of the Hon'ble High Court of Bombay in the case of Chemicals and Fibres India Ltd. reported in 1982 E.L.T. 917. He stated that some demand was raised beyond the period of six months.

24. Regarding the suppression of the fact he pleaded that in case the terms like IF transformers were mentioned in the classification list there appeared to be some contraction in the Original Order regarding mis-description. He pleaded that the demand could be raised retrospectively as held by the Hon'ble Supreme Court in the case of Elson Machines v. C.C.E., reported in 1988 (38) E.L.T. 571 (para 8).

The said para, for convenience of reference, is reproduced below : "8. The next submission on behalf of the appellant is that the Classification Lists had been approved earlier and the Excise authority was estopped from taking a different view. Plainly there can be no estoppel against the law. The claim raised before us is a claim based on the legal effect of a provision of law, and, therefore, this contention must be rejected." 25. The question that falls for consideration in the appeal is whether the terms transformers should be given a restricted meaning as pleaded by the appellants or it should be given a more comprehensive meaning as staled by the revenue. We observe that both sides have placed reliance on technical literature to explain the scope of the term 'transformer' as it is understood in the electronic and electrical fields. The learned Director of the appellants has

fairly brought on record the term as used in the electronic and electrical field but his plea is that the terms though are of broad import, the term transformer is understood by those in the trade only covering those which are used in the electric supply lines. He pleaded that the items manufactured by the appellants were used in the eletronic circuitry of Radio and TV sets. He, however, did not place any evidence before us in support of his this plea and his stress is only on the scope of the item as set out in the J & P transformer book referred to in para 10. We observe that in that book the transformers of a limited range used in the power lines alone appear to have been covered and it cannot be said that the full range of transformers are dealt with in that book. On the contrary we find that in the book 'Electronic Communication' referred to in para 13, the term transformer has been described as one the common components or parts used in electricity, electronics and Radio and that a transformer may be used to step up or step down voltages, to change low voltage high current AC to high voltage low current AC or vice versa or to change the impedence or a circuit and that a transformer consists of a primary wire and a secondary wire. Further, we find in the en-cyclopeadia of Electronics and Computers by Sybil P. Parker, McGraw Hill Book Company the term transformer as set out in para 22 covers both power line transformers and Audio and Video frequency transformers. We also find that the Indian Standards, 1982 in the formulation of which the learned Director of the appellant's Company had a hand describes intermeadiar frequency transformers as consisting of two or more windings. The preponderance of the authorities cited before us shows that the transformers can either for chanign the voltage or the current strengths in the power transmission lines and can be also for bringing about changes in frequency and selection of the same for wireless transmission and reception both audio and video.

We observe that tariff entry 8404.00 is comprehensive and covers all types of electrical transformers and inductors. Inductors as has been seen from the glossery of terms of ISI set out in para 19 is an electromagnetic device consisting of conductor bound in a cylindrical or spiral form. It is thus seen that the item does cover coils which are required to produce a desired result so far as the impedence is concerned and it will not, therefore, be out of place to read the scope of the term transformer to be covering also those which are for the 'purpose of bringing more

changes in the frequency or changes in the impedence for selecting a particular frequency for feeding into the electronic circuits. There is no doubt that the electromagnetic field by which the desired changes in the frequency are brought about by the two sets of coils namely primary and secondary are by virtue of flow of the electric current in these coils. These, therefore, can be taken to be the answer to the description of the electrical transformer. In the fact of the facts on record it has, therefore, to be held that the term transformer covers both the line transformers in the power lines and also those used in the transmission and reception of electromagnetic waves. The term transformer being a technical nomenclature, its meaning has necessarily to be understood in the sense in which those who are in this technical field. We, therefore, hold that all those coils manufactured by the appellants which have a primary and a secondary are covered by the term electrical transformer assessable under tariff heading 8504.00. So far as the single coils are concerned, the learned Director of the company informed during the hearing that these are having inductance to answer impedance in the circuits for bringing about necessary frequence changes with the signals traversing through the circuits. We, however, find that no factual analysis in this regard have been done as to which of the coils answer to the description of transformers and which of the coils manufactured by the appellants answer to the description of inductance. The appellants have pleaded that so far as the inductance are concerned the benefit of the Notifn.

160/86 will be available to them for assessment of the same at 15% adv.We in the circumstances by holding the classification of the goods as above direct that the lower authority should reassess the goods manufactured based on whether these are transformers or inductances.

26. As to the question of limitation we observe that the appellants have a good case inasmuch as we find that they declared the goods by the name in which they are marketing them and the term IF transformer also figures thereunder. In spite of the fact that they have declared the goods so the lower authority initially chose to assess the goods under 8529.00. Obviously there was some lack of understanding on the scope of the tariff entires in the mind of the competent authority who approved the classification list and the appellants also believed bona fidely that

their goods were assessable under tariff heading 8529.00.

We observe in this background that it cannot be held that there was any mis-statement or any suppression of facts on the part of the appellants. In this context the Hon'ble SC in the case of Chemphar India v. CCE have observed as under :- "In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to Sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months." In view of the above and following with respect the ratio of the Hon'ble Supreme Court's judgment we hold that the longer time period cannot be invoked beyond six months for raising that demand.

27. We, therefore, partially allow the appeal of the appellants in the above terms and set aside the order of the lower authority for reassessment of the goods in terms of what we have held above. The appeal is thus partially allowed by remand.