

In Re: National Radiators and Oil

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-07-1991

Reported in : (1992)(41)LC83Tri(Delhi)

Appellant : In Re: National Radiators and Oil

Judgement :

1. Intelligence was gathered by the Anti-Evasion Branch, Central Excise Collectorate, New Delhi that M/s. National Radiators & Oil Coolers, F-26/4, Okhla Industrial Area, Phase-II, New Delhi-20 (hereinafter referred to as the said party) are engaged in the manufacture of radiator cores and radiator assemblies for internal combustion engines, they were holding a valid central excise licence L-4 No. 14/T.I. 68/MOD IV/85 and are wrongly classifying the products with intent to evade payment of appropriate central excise duty. Accordingly, the central excise officers of Anti-Evasion Branch visited the factory premises of the said party on 4.7.1989. On scrutiny of the classification list submitted by the party from time to time in Form-1 with effect from 2.4.1986 to 1.4.1989, it was observed that the party had mis-classified their products viz., Radiator cores and Radiator assemblies under three sub-heading Nos. i.e., 8409,00 (for use solely or principally with the engines of heading No. 8407 and 8408), 8608.00 (as parts of railway or tramway locomotives or rolling stock) and 8708,00 (as parts and accessories of motor vehicles of heading No. 87.01 to 87.05). It was observed that by mis-declaring their products under these three different sub-headings the party was availing the benefit of small scale exemption available under Notification No. 175/86-CE dated 1.3.1986 (as amended) up to the clearances of an amount of Rs. 30 lacs annually.

2. It was observed that Radiator cores and Radiator assemblies are used solely or principally with I.C. Engines for the purposes of cooling down the engines and without these the engines cannot function.

Radiator is an integral part of the internal combustion engine, whether diesel or petrol and whether used in motor vehicles or railways or with stationary type engines, without which an engine is not complete. A Radiator is basically a heat exchanger in which the hot water coming from engine is cooled by the forced flow of atmospheric air around the pipes or tubes carrying the said water. The purpose of a radiator is to cool the water received from the engine and unless the excess heat generated in I.C. Engines while they are in operation is carried away and the parts of the I.C. Engine are adequately cooled regularly, the engine as such would be damaged. This is also evident from the book titled as Fundamentals of I.C. Engine written by Paul W. Gill Janes H. Smith Jr. Engenc J. Zinrys (relevant pages as per Annexure-E to the show cause notice). Thus it was concluded that radiator cores and radiator assemblies are integral part of I.C. Engines without which the engine cannot work, in fact it cannot even be tested/commissioned.

3. Further Section Note 2(a) to Section XVII of the Central Excise Tariff Act, 1985, was also made wherein it is stipulated that machines and apparatus of heading Nos. 84.01 to 84.79 and parts thereof are excluded from Section XVIII which covers Chapter 86 to 89, whether or not they are identifiable as for the goods of Section XVIII. Therefore, radiator cores and radiator assemblies which are used solely with the engines of heading No. 84.07 or 84.09, whether these are used with industrial engines or engines of motor vehicles or engines of locomotive, appear to be classifiable under sub-heading No. 8409.00.

4. It was, therefore, alleged that the party misdeclared the products manufactured by them i.e., radiator cores and radiator assemblies meant for I.C. engines of railway locomotives and motor vehicles, by classifying the same under sub-heading No. 8607.00 and 8708.00 respectively in the respective classification lists submitted by them from 2.4.1986 to 1.4.1989 and whereas the same appropriately classifiable under sub-heading No. 8409.00 with intent to avail in-admissible exemption upto the aggregate value of clearance of Rs. 30 lacs under Notification

No. 175/86/CE, dated 1.3.1986 (as amended) during the year 1986-1987, 1987-1988, 1988-1989 and 1989-1990 and with intent to evade payment of central excise duty leviable thereon.

5. M/s. National Radiators & Oil Coolers, New Delhi were eligible for small scale exemption from payment of duty upto the first clearances of Rs. 15 lacs only under Notification No. 175/86-CE dated 1.3.1986 as amended since the radiator cores and radiator assemblies manufactured by them and meant for use with industrial engines and I.C. Engines of Railway Locomotives and Motor Vehicles are covered under sub-heading No. 8409, whereas they availed in-admissible exemption from payment of duty upto the value of clearances of Rs. 30 lacs during the year 1986-1987, 1987-1988, 1988-1989 and 1989-1990. Further during the period from 1.4.1986 to 28.2.1989, in respect of Radiator cores and radiator assemblies for I.C, Engines of railway locomotive the party was required to pay central excise duty @ 10% Adv. (20% - 10%) under sub-heading No. 8409.00 whereas they paid duty after crossing the limit of Rs. 30 lakhs @ 5% adv. (15% - 10%) under sub-heading No. 8607.00.

6. On account of this differential duty amounting to Rs. 7,45,941.12 as detailed in Annexure 'A', 'B', 'C, and 'D', of the show cause notice was found recoverable from the party.

7. It was alleged that the party have wilfully suppressed the facts by mis-declaring radiator cores and radiator assemblies as parts of railway or tramway locomotives or rolling stock and as parts and accessories for motor vehicles under sub-heading No. 8607.00 and 8708.00 respectively whereas the same are parts of I.C. Engines for railway locomotives and motor vehicles respectively, with intent to evade payment of Central Excise. Duly, therefore, the provision to Section 11A(1) of the Central Excises and Salt Act, 1944 is applicable in the case.

8. The department further relied upon the statement of Shri Baljit Singh, Luthra, Proprietor of the unit wherein it was admitted that they have declared radiator cores and radiator assemblies falling under sub-heading No. 8409.00 for diesel engines, under subheading No.8607.00 for locomotives and under sub-heading No. 8708.00 for motor vehicles and tractors and had been clearing the same

accordingly and that their products are used by the Indian railways on the diesel railways engines in order to cool down the diesel engines.

9. Therefore, in view of the above the party was issued a notice vide C. No. V (8409) 15/CE-87/MOD-11/90/2468 dated 26.7.1990 by the Collector, Central Excise, New Delhi, to show cause as to why: a) Penalty to the extent permissible under the law should not be imposed on them on the above ground and for the contraventions of Rules 9(i) 173B, 173F under Rule 173Q of the Central Excise Rules, 1994, should not be imposed on them.

b) differential duty amounting to Rs. 7,45,941.12 (Rs. 7,27,567.80 as BED and Rs. 18,373.32 as SED) not paid on the radiator cores and radiator assemblies cleared by them during the period from 1.4.1986 to 3.7.1989 should not be demanded and recovered from them under Rule 9(2) of the Central Excise Rules, 1944 read with Section 11A of the Central Excises and Salt Act, 1944 by applying 5 years period of limitation.

10. The party submitted their written reply to the show cause notice vide their letter dated. 21.9.1990 and denied all the allegations levelled against them in the show cause notice mainly on three grounds as below: i) that they are a small scale unit entitled to small scale exemption admissible under Notification No. 175/86 dated 1.3.1986 as amended and they have been filing the classification lists showing the full description of the goods manufactured by them and the same have been duly approved also by the proper officer for all the years in question (photocopy of the classification list were enclosed) and since proper office has approved the classification lists for all the year charges of mis-declaration, mis-statement and suppression of facts pales into insignificance. It was contended that the demand raised is substantially time barred as there are no explicit grounds in the show cause notice, justifying extension of the period of limitation of up to 5 years.

The party relied upon the judgment of the Supreme Court of India in the case of Collector of Central Excise v. Chemphar Drugs and Liniments principles governing demands beyond the period of six months and reproduced the relevant portion of the judgment.

It was further submitted that the matter of classification of their product has already been decided after complete investigation and enquiry by the proper officer and unless the classification list already approved for the previous years are amended, modified or set aside by the competent authority, the demand show cause notice is not legally valid, they referred to judgment of the Supreme Court, India in the case of Madhu Milan Sintex case reported at 1989 (35) ELT 349 : 1988 (17) ECR 1 (SC) : ECR C 1218 SC support of their contention.

They further submitted that the classification list which was accepted since 1986 is sought to be changed, thereby putting them to hardships and out of business. They invited the attention to Tribunal Decision in the case of TISCO v. Collector of Customs, Calcutta wherein it was held that classification ii) Secondly, the party contested the demand on the ground that their products are correctly classifiable under sub-heading Nos.

8409.00, 8607.00 and 8708.00 depending upon the ultimate use in I.C. Engines, Railway Locomotives and Motor Vehicles respectively. In support of their contention they put forth the following reasons based upon various technical details of the products explanatory notes from HSN and Tribunal decision in the case of Poona Radiators v. Collector of Central Excise Orders No. 19. & 20/90-B-I in appeal No. E/669/89-B-I suppl. Appeal No. E/3256/89-B-I. The party submitted that they are manufacturing radiator assemblies/radiator cores, which have different applications and are used in different systems of machinery, which are both movable and immovable. The kind and design of the radiator assembly and radiator core is dependent on the nature of the application as well as the location of the same in the movable or immovable equipment. They also manufacture radiator assembly/radiator cores which are used with the generating sets. The radiator assembly or radiator core is a part of internal combustion engine in such an application because it is designed to fit an internal combustion engine of known horse power and RPM. These radiators are properly classified under heading No. 8409 by them.

11. They submitted that they also manufacture radiator assembly & radiator cores for fitment into diesel locomotives and these are manufactured as per the designs

and specifications of diesel locomotive works or the Indian railways. These radiator assembly and radiator cores are fitted as a panel on the side of the diesel locomotive and are designed for location on the diesel locomotive body itself. The internal combustion engine is housed within the body of the locomotive but at a different location. The radiator assembly and radiator cores are not designed for a specific internal combustion engine and they are not even aware of the kind of internal combustion engine being used nor its horse power or its rating/RPM. The internal combustion engines are chosen by diesel locomotive works or Indian railways to be fitted to the kind of Diesel locomotive design fabricated by them. By virtue of these specifications and the location of the radiator on the diesel locomotive such radiator assembly and radiator cores are understood commercially by them, diesel locomotive works and the Indian railways to be parts of diesel locomotives. The function of radiator is to cool the main which picks up heat from the diesel engine the cooling water flows in closed circuit and radiator is part and parcel of this circuit. In the "McGraw Hill" Dictionary "Radiator Temperature Drop" is defined as "In internal combustion engine, the difference in temperature of the coolant liquid entering and leaving the radiator".

In fact the function of the radiator is to cool the water/coolant liquid. They referred to Chapter Note 3 Section XVII which reads as follows: References in chapter 86 to 88 "Parts" or "Accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those chapters. A part or accessory which answers to a description in two or more of the headings of those chapters is to be classified under the heading which corresponds to the principal use of that part or accessory.

12. They also referred to the HSN explanatory notes under heading No.86.07 which suites that heading covers parts of railway or tramway locomotives or rolling stock provided the parts fulfill both the following conditions.

i) They must be identifiable as being suitable for one holding or principally with the above mentioned vehicles.

ii) They must not be excluded by the provisions of the notice to Section XVIII. The condition (i) above is fulfilled as for the condition (2) Section XVII, note 2(c) reads

as: machines and apparatus of heading No. 84.01 to 84.79 and parts thereof articles of heading No. 84.81 or 84.82 and provided they constitute integral parts of engines or motor, articles of heading No. 84.83.

13. The party explained that radiator will be found to be located separately with the locomotives and not with the diesel engine therefore, they do not appear to be parts of the diesel engine and as far as the radiators for the locomotives are concerned even though they are meant for cooling the water which picks up heat from the diesel engines, the location is with the locomotives, which is more specific rather than the heading No. 84.09. The classification for the railway locomotive radiators under heading No. 86.07 is preferable and appropriate. They referred to the classification of similar products adopted by M/s. Banco Products, Baroda and Poona Radiators, Pune, under heading No. 86.07. Poona Radiators v. Collector of Central Excise Orders No. 19 & 20/90-8-1 dated 15.2.1990 in appeal No. E/669/89-8-I with suppl. Appeal No. E/3256/89-P-I where it was held that the radiators do not appear to be the parts of diesel engine and as far as the radiators for the locomotives are concerned, even though, they are meant for cooling the water which picks up heat from the diesel engine, the location is separately with the locomotive. Therefore, they were being principally used in the railways locomotives, which is more specific rather than the heading No. 8409, the classification for the locomotive radiators under heading No. 8507 (sic) is appropriate. The party invited attention to the alphabetical commodity index to the harmonised code on which the central excise tariff schedule is based w.e.f. 29.2.1986 wherein the radiator and radiator cooling for motor vehicles, Cabins, cars, lorries of heading No. 8701 to 8705 are classifiable under heading No. 8708.91. The party submitted that the central excise tariff and customs tariff are "in pan materia" with each other and heading in the customs tariff relating to radiator falling under chapter 87 should be inferred as falling under the relating to vehicles concerned. In view of this the party claimed that, the radiator assembly/radiator cores manufactured by them for use solely or principally with the motor vehicles of heading No. 8701 to 8705 were correctly classified under heading No. 870.8.

15. They added that their radiators suitable for use solely or principally with the engines of heading No. 8407 to 8408 were classified under heading No. 8(sic)

them-selves and classification of these items has not been deputed.

16. The party represented by Shri Baljit Singh Luthra, Prop, along with their consultant Shri K.K. Sharma appeared for personal hearing on 5.12.1990. They reiterated the arguments put forth in their written submissions and handed over a written note briefing the contentions in their support. They quoted one judgment of the Supreme Court of India in the case of Madhu Milan Sintex reported in 1988 ELT (35) 349 : 1988 (17) ECR 1 (SC) : ECR C 1218 SC and submitted a copy of the same in support of the plea that the classification when subsequently amended will not have any retrospective effect and no demand can be raised prior to the issue of the show cause notice, 17. In addition to the decision of the CEGAT Judgment in the case of M/s, Poona Radiators, they relied upon a Trade Notice No.129/CH-86/76-CE-PRO/Cal-II/90 dated 11.7.1990 issued by the Collector, Central Excise Calcutta, wherein it was clarified that radiator assembly/radiator core if specifically designed for use in railways locomotive would be appropriately classifiable under heading No. 86,07.

18. The party further argued that other manufacturer like Poona Radiator, Pune are clearing radiators to railways classifying the same under heading No. 86.07 and felt discriminated. They produced copies of some of the gate passes of Central Excise for the current period.

19. The party laid emphasis on the same analogy adopted for Radiator for railway locomotive and prayed for the classification of radiators meant for motor vehicles to be done under heading No. 8708 on the same ground.

20. They further produced the copies of the excise gate passes in respect of M/s. Banco Products, Baroda and M/s. Bharat Radiator Ltd. showing the clearance of Radiators meant for Motor Vehicles and classification under heading No. 8708.

21. I have carefully gone through the records of the case submissions made by the party in their written reply to the show cause notice, arguments made during personal hearing and various judicial pronouncements cited by party in support of their contentions.

22. The party have mainly contested the notice on two grounds as mentioned below: 1. The radiator assembly/radiator cores designed for use solely or principally with the locomotives of heading No. 86.01 and 86.02 are correctly classifiable under heading No. 86.07 and the radiator assembly and radiator cores designed for use solely or principally with the motor vehicles of heading 87.01 to 87.05 are correctly classifiable under heading No. 87.08.

2. The demand is hit by bar of time limitation as there are no explicit grounds in the show cause notice justifying the extension of the period of limitation up to 5 years and all their classification lists for the period involved were duly approved by the proper officer.

23. I have examined in depth the issue of classification of Radiator assembly/radiator cores having various application in various internal combustion engines, railway locomotives, machines and motor vehicles etc. The department have alleged that all the radiator assembly and radiator cores irrespective of their ultimate end use are integral part of I.C. Engines and are, therefore, correctly classifiable under one heading No. 84.09 and the party have wrongly availed the small scale exemption from whole of the central excise duty up to value of Rs. 30 lacs for all the heading under notification No. 173 (sic)/86 did.

1.3.1986 by misclassifying those items under three different headings i.e., 84.09, 87.07 and 87.08. The department have mainly relied upon the plea that radiator cores and radiator assemblies are used solely or principally with the I.C. Engines for the purpose of cooling down the engines and without these the engines cannot function, and these are integral part of I.C. Engines whether diesel or petrol & whether used in motor vehicles or railways or with stationary type engines without which engine is not complete. The department has further relied upon a technical book titled "Fundamentals of I.C. Engines." 24. In view of the various details and clarification submitted by the party regarding their products, I observed that radiator assembly and cores have different application and are used in different systems of machinery which are both movable and immovable. The kind and design of the radiator assembly and cores is dependent on the nature of the application as well as the location of the same in the equipment. The items are

reported to be used not only for diesel engine but also for electric engines and therefore its classification as parts of I.C.Engines under heading No. 8409 is not warranted in such cases where they are principally designed for the equipment or machine and not for the I.C. Engine as such.

25. I am convinced with the arguments of the party and rely upon the CEGAT judgment in the case of Poona Radiators, Pune v. Collector of Central Excise quoted by the party wherein it was held that radiator assembly and cores are parts of radiator located with railway locomotive and not with the diesel engine although meant for cooling water which picks up heat from the diesel engine are correctly classifiable under heading No. 86.07 as parts of railway or tramway locomotive being principally used in railway locomotives. I also rely upon the trade notice No. 123/CH-86/176/CE/PRO/Cal-II/90 dated 11.7.1990 issued by the Central Excise Collectoratc, Calcutta wherein similar view was taken for the classification of such items meant for railway locomotives under heading No. 86.07 and the explanatory notes of the HSN explicitly classifying radiators meant for motor vehicles under heading No. 87.08 as parts of motor vehicles. I have observed that the department did not queried/disputed in the show cause notice about the ultimate end use of the radiator assembly/cores. It was simply alleged that the radiator assembly/cores irrespective of their end use will be classified under heading No. 84.09 as parts of the I.C.Engines. I observed that the department have nowhere alleged and adduced any evidence to the effect that those radiator assembly/cores were not used in the equipment disclosed by the party in their classification list or excise gate passes. I observed that the product radiator assembly/cores is designed according to the specifications of Indian railways and is for use solely or principally with locomotives of heading No. 8601 and 8602. Heading No. 8408 for I.C. Engines is said in HSN explanatory notes, at page 1151, to cover engines equipped with fuel engine pump, water radiator etc. which indicates that water radiator is not an integral part of I.C. Engine but a distinct and separate part. The Radiator assembly is reported to be used not only for diesel engines but also for electric engine and therefore its classification as parts of I.C. Engines under heading No. 8409 is not warranted. H.S.N. explanatory notes at pages 1432 clearly provides that radiators are classifiable under heading No. 8708 as parts and accessories for motor vehicles. I also observed that in view of section note

1(6) of Section XV and Section note 3 of Section XVIII, the product subject to the fulfillment of conditions prescribed in HSN explanatory notes 1 at page 1410 is rightly classifiable under heading No. 8607.

26. Therefore in view of above and the findings of relevant judgment in the case of Poona Radiators, Trade Notice of Central Excise Collectorate, Calcutta and explanatory notes of HSN, I observed that the classification of the radiator assembly/cores has to be decided according to the principal use in the ultimate equipment in which it issued and hold that: i) The radiator assembly/cores suitable for use solely or principally with the engines of heading No. 84.07 are correctly classifiable under heading No. 84.09.

ii) The radiator assembly/cores meant solely or principally for railway locomotives even though they are meant for cooling the water which picks up heat from the diesel engine are more specifically classifiable under heading No. 86.07 as parts of diesel locomotives.

iii) The radiator assembly/cores meant solely or principally for motor vehicles of heading No. 87.01 to 87.05 are correctly classifiable under heading No. 87.08.

27. Since the demand against the party is not sustainable on the main issue of classification of the products of the party, I do not feel any need to discuss the other issues of approval of classification list and subsequent application of provision to Section 11A of the Central Excises and Salt Act, 1944 for demanding central excise duty beyond the period of six months.

28. In view of the above findings, I hold that the party have correctly classified their products under three different headings depending upon the principal use of the radiator assembly/cores in the final equipment etc. and therefore, were entitled to the exemption as prescribed under notification No. 175/86 dated 1.3.1986 as amended for clearing goods at nil rate of duty up to the value of Rs. 30 lacs instead of Rs. 15 lacs under only one heading. I therefore, order that demand of central excise duty amounting to Rs. 7,45,941.12 and other proceedings initialed in the subject notice be dropped.