Vikas Engineering Associates Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-14-1995

Reported in : (1995)(78)ELT219TriDel

Appellant : Vikas Engineering Associates

Respondent : Collector of C. Ex.

Judgement :

1. These are three appeals filed by (i) M/s. Vikas Engineering Associates (hereinafter referred to as 'VEA') against the order-in-original dated 20-1-1994, passed by the CCE, Allahabad; (ii) M/s. Control and Switchgear Co. Ltd., New Delhi (hereinafter referred to as 'C & S'), against the Order-in-Appeal dated 31-3-1993 of the CCE (Appeals), New Delhi; and (iii) Revenue - CCE (Pune) against the Order-in-Appeal dated 20-12-1991, passed by the Collector of Central Excise (Appeals), Pune, in the case relating to M/s. Ravi Industries, Kolhapur (hereinafter referred to as 'Ravi Industries'). In the appeal by VEA, the Revenue has filed Cross Objections, while in the appeal filed by the Revenue - CCE, Pune, the respondent - Ravi Industries have filed the Cross Objections. All the three appeals were fixed for common hearing but separate arguments were advanced in respect of different appeals. As we find that the goods under consideration are not the same in these separate appeals, although they are being disposed of by this common order, we had thought it fit to discuss the goods separately wherever considered necessary.

2. VEA were engaged in the production of Bus Ducts, which they classified under sub-heading No. 8538.00 of the Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as 'Tariff'), as a part suitable for use with the apparatus (Panel & Distribution Boards) of sub-heading No. 8537.00 of the Tariff. It was found on examination that for manufacture of these Bus Ducts, Aluminium bars of required length were arranged in a row and they were supported by insulators and kept inside a metal duct. They were used with lightening arresters, surge suppressors, potential transformers, etc. It, therefore, appeared that they were an accessory to an electrical power equipment and provided connections in power stations; (a) between the generator on one end and transformers on the other; or (b) between transformer on one end and the switchgear on the other end; and (c) between the switchgears. It was alleged in the show cause notice dated 25-9-1992, as amended, that the goods meritted classification under sub-heading No. 8544.00 of the Tariff. After taking into account the Central Excise duty already paid, and the provisions of Notification No. 175/86-C.E., dated 1-3-1986, as amended, and after invoking the larger period of limitation, a differential Central Excise duty of Rs. 6,19,150.86 was demanded for the period 31-10-1987 to 25-1-1991. The Collector of Central Excise, Allahabad who adjudicated the matter, observed that the goods in question were an electric conductor and corresponded to the description of Bus Duct or Bus Trunking and that they were classifiable under sub-heading No. 8544.00 of the Tariff. He confirmed the duty liability of Rs. 6,19,150.86 and imposed a penalty of Rs. 1,50,000/- on VEA.3. In the case of C&S, the assessee declared their product LT Bus Duct and sought classification under sub-heading 8537.00 of the Tariff.

According to the Revenue, it was more appropriately classifiable under sub-heading No. 8544.00 as conductor. For the period from 26-7-1991 to 29-2-1992, the differential Central Excise duty of Rs. 1,43,126.95 was demanded in terms of Notification No. 69/86-C.E., dated 10-2-1986 (as amended). This matter was adjudicated by the Assistant Collector of Central Excise, New Delhi who observed that the Bus-duct was an accessory to an electric power equipment, was basically a conductor, incorporating various apparatus, and was classifiable under sub-heading No. 8544.00 of the Tariff. He confirmed the demand of Rs. 1,43,126.95, but did not impose any penalty on the appellant. On appeal the Collector of

Central Excise (Appeals), New Delhi confirmed the order passed by the Assistant Collector of Central Excise, New Delhi.

4. In so far as the appeal by the Revenue is concerned, the respondent Ravi Industries had classified their product Bus Bar Distribution Chamber under sub-heading No. 8537.00 of the Tariff. The Revenue sought to classify the product under sub-heading No. 8544.00 of the Tariff.

The Assistant Collector of C.E., Kolhapur, who adjudicated the matter observed that sub-heading No. 8537.00 was applicable to the door, panels, locks, Cabinets, Consoles and other bases, equipping with two or more apparatus of either Heading No. 85.35 of the Tariff or No.85.36 of the Tariff, for electrical control and distribution of the electricity, and that bus bar distribution chamber was not satisfying the precondition of Heading (sic) of the Tariff. In case of bus bar, he observed that it functions more or less as the conductors of electrical power, and could be considered as insulated conductor, and merited classification under sub-heading No. 8544.00 of the Tariff. The Collector of Central Excise (Appeals), Pune relied upon the Explanatory Notes to the HSN Tariff Heading No. 85.37 and ruled that the goods in question were more closer to sub-heading No. 8537.00 of the Tariff than the sub-heading No. 8544.00, and that they were correctly classifiable under sub-heading No. 8537.00 of the Tariff. Against this order of the Collector of Central Excise (Appeals), the Revenue has filed the present appeal. The Respondent-assessee have filed Cross-Objections.

The Revenue has sought classification under sub-heading No. 8544.00, while the assessee have claimed classification under sub-heading No.8537.00.

5. The matters were heard on 28-9-1994 and 29-9-1994. Shri S.K.Deo-dhar, Ld. Consultant appeared for Ravi Industries. Shri RS. Bedi, Ld. Consultant appeared for C&S, and Shri V. Lakshmi Kumaran with Shri Nambirajan, Ld. Advocates appeared for VEA. The Revenue was represented by Shri B.K. Singh, Ld. SDR, Shri K.K. Jha, Ld. SDR and Shri K.K.Dutta, Ld. JDR.6. In the case of Ravi Industries, Shri K.K. Jha, the Ld. SDR submitted that the function of the product called Bus Bar Distribution Chamber was transmission of electricity, and it was the bus bar which imparted its character to the Bus Bar Distribution Chamber (BBDC).

The bus bar was a conductor. He referred to the Rule 3(c) for the Interpretation of the Schedule which provided that when goods cannot be classified on the basis of most specific description vis-a-vis, a more general description or on the basis of the materials/components which give the product their essential character, then the goods should be classified under the heading which occurs last in the numerical order among those which equally merit consideration; he pleaded that the goods under consideration were rightly classifiable under sub-heading No. 8544.00.

7. Shri S.K. Deodhar, the Ld. Consultant described the function of BBDC as to receive electricity from the main line and distribute it to the apartment owners. He referred to Section Note 4 under Section XVI of the Tariff which is as under :- "where a machine (including a combination of machines) consists of individual components (whether separate.or inter-connected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the Headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function." He referred to the Supreme Court decision in the case of Eskayef Ltd. v. CCE reported in 1990 (49) E.L.T. 649 (S.C.), wherein the Supreme Court had observed that a substance does not cease to be Patent or Proprietary medicines merely because it can also be used for purposes other than prevention of treatment of diseases. Reference was also made to the Tribunal's decision in the case of Mahindra Sintered Products Ltd. v. CCE, Pune reported in 1994 (71) E.L.T. 563 (Tri.) to say that the expert opinion could not be faulted unless better and more solid evidence from other experts is obtained. He sought the classification of their product under sub-heading No. 8537.00.

8. In the case of C&S, Shri P.S. Bedi, the Ld. Consultant stated that their goods were a type of cabinet, consisting of conductors and other items. In all, there were 11 items in the cabinet and that their proper classification was under sub-heading No. 8537.00.

9. Shri V. Lakshmi Kumaran, the Ld. Advocate appearing for VEA, at the outset, stated that the appellants were withdrawing the ground No. 1 on the amendment

to the grounds of appeal. He submitted that the goods under consideration were to be classified under sub-heading No. 8536.90 of the Tariff, but fairly admitted that the classification under Heading No. 85.36 of the Tariff was not before the lower authorities.

Their claim before the Assistant Collector of Central Excise was for the classification under sub-heading No. 8538.00, and the Collector of Central Excise (Appeals) held that the goods were classifiable under sub-heading No. 8544.00. He had denied them the benefit under Notification No. 69/86-C.E., dated 10-2-1986. They had not claimed assessment under sub-heading No. 8537.00, and now their claim is for classification under sub-heading No. 8536.90. He referred to the Supreme Court's decision in the case of Shriram Machinery Corpn. Pvt.

Ltd. v. CC, 1992 (57) E.L.T. 369 (S.C.) wherein the Supreme Court had held that alternative classification at Tribunal's stage was claimable.

He stated that sub-heading No. 8544.00 was not appropriate as their product was not insulated electric conductors. Bus Bars were conductors, but in their case, they have been put into housing. He referred to sub-heading No. 8536.00 which covered the goods "for making connections to or in electrical circuits", and submitted that the goods were rightly classifiable under sub-heading No. 8536.90 of the Tariff.

The ld. advocate also submitted that the clarification by the Central Board of Excise and Customs was not applicable to the goods in question.

10. On 29-9-1994, continuing arguments Shri Shiv Das and Shri Nam-birajan, the Ld. Advocates for VEA stated that the Collector's conclusion about sub-heading No. 8544.00 was erroneous. The goods are far from electric conductors. His conclusion was against HSN advice at page 136 of the paper book. The Collector of Central Excise had gone by Board's Tariff Advice. According to HSN such goods were classifiable under sub-heading No. 8535.90 and 8536.90. On limitation, it was stated that the period involved was 31-10-1987 to 29-5-1991 while the show cause notice was issued on 25-9-1992. The show cause notice was based on Tariff Advice and that earlier the Department was not sure of the

correct classification. In the circumstances, extended period of limitation could not be invoked. He relied upon the Supreme Court's decision in the case of Padmini Products v. CCE, 1989 (43) E.L.T. 195 (S.C.), and the case of CCE v. Chemphar Drugs and Liniments, 1989 (40) E.L.T. 276 (S.C.). They have not collected any duty from their customers and their prices were cum-duty prices.

11. In reply Shri B.K. Singh, the Ld. SDR stated that the Tribunal could not decide a new classification which was not claimed by the assessee and that for the third classification sought, the matter has to be remanded. He referred to the Supreme Court's decision in the case of Shri Ram Machinery Corporation (P) Ltd. v. CC, 1992 (57) E.L.T. 369 (S.C.), and submitted that in this case, classification under sub-heading No. 8536.00 has not been claimed on the basis of some decision of the Tribunal or any other authority. Reference was also made to the Tribunal's decisions in the cases of :-Collector of Central Excise, Rajkot v. Surgichem 1987 (27) E.L.T. 548 (Tribunal);D.C.W. Ltd. v. Collector of Customs, Kandla 1994 (73) E.L.T. 107 (Tribunal]; (iii) Reckitt & Caiman ojr India v. Collector of Central Excise, Bangalore 1994 (71) E.L.T. 44 With regard to the product of VEA, it was mentioned that the bus bars were insulated with heat shrink sleevings and these sleevings were for insulation. These are conductors and are insulated conductors. Bus duct is only a housed bus bar, and was meant for making connections to or in electrical circuits. The function of the item was to conduct the electricity with minimum loss, and were rightly classifiable under Heading No. 85.44. As regards the time bar, the Ld. SDR relied upon the order of the Collector and referred to the Collector's conclusion that there was positive act of misleading and misdeclaration and there was a wilful mis-statement and that the proviso to Section 11A of the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) was applicable.

12. Shri K.K. Dutta, the Ld. JDR with regard to C&S stated that the goods were Light Tension (LT) Bus duct. The classification list was effective from 26-7-1991, and the period involved was from October, 1991 to June, ,1992 and the show cause notice is dated 6-3-1992. The demand was within the normal period of limitation. The appellants had sought classification under Heading No. 85.37. The function of the item was to conduct electricity from one point to the other where

voltage/ampere was high. As what was a conductor, he referred to the HSN Notes and pleaded for classification under sub-heading No. 8544.00.

13. In rejoinder Shri P.S. Bedi, the Ld. Consultant with regard to C&S stated that their product was an assembly and a combination of various items, obviously of more than two, and was rightly classifiable under Heading No. 85.37. The goods were not bus bar with LT Bus duct. It was more than a wire more than a conductor and no assembly will come under Heading No. 85.44.

14. Shri V. Lakshmi Kumaran, the Ld. Advocate stated that their product was an apparatus while Heading No. 85.44 will not cover an apparatus.

The goods were not bus bar as such but more than that. The bars were not insulated. These goods were regularly manufactured by them and there was no intentional deliberate withholding of information and accordingly the larger period of limitation was not available.

15. Shri K.K. Jha, the Ld. SDR with regard to Ravi Industries in rejoinder stated that the goods could not be classified under Heading No. 85.37. There were not more than one item therein. Under the Interpretative Rules in case of competing entries, the later entry will prevail.

16. The Revenue's written submissions were received on 11-10-1994, VEA's written submissions on 18-10-1994 and written submissions on behalf of Ravi Industries were received on 19-10-1994.

17. We have carefully gone through the facts and circumstances of all the cases, and have given our due thought and consideration to the submissions made by both the sides. We have also gone through the written submissions filed by the Revenue, as well as by the VEA and Ravi Industries.

18. In all the three appeals, the Revenue had sought to classify the goods under sub-heading No. 8544.00, while the assessees have claimed the classification under different sub-headings No. 8538.00/8537.00 and 8536.90. In the case of VEA an alternative plea was also made at the time of hearing before us for classification under sub-heading No.8536.90.

19. Now, let us have an idea of the products under consideration. M/s.

Ravi Industries were licensed to produce goods under Chapter 85 of the Tariff. They have described their goods as bus bar distribution chamber having a three phase, 4 wire system with one neutral conductor. The four naked Copper strips called bus bars are in the nature of conductors and are supported by porcelain/China clay to prevent flow of electricity in the metal box housing the conductors. The assessee had stated that the porcelain supports work as an insulator in the bus bar distribution chamber. The housing is of the sheet metal. No apparatus except the conductors are housed in the chamber. Although it is named as distribution chamber, it is in the nature of transmitting current from the main to individual supply lines. The principal functioning of bus bar distribution chamber is receiving electricity from the main line and transmitting it to several consumers through sub-lines. It dispenses with the necessity of connecting each flat directly to the pole of electric supply line. In this system a single line is drawn from the electric pole for different phases and from it several connections are given to different consumers. The assessee had contended that "each phase because of the presence of bus bar supported by porcelain insulator works as electrical apparatus/equipment." 20. The product produced by C&S has been described as LT bus duct. It is stated to be a series of cabinets (with removable inspection covers) fabricated out of sheet steel/aluminium, having aluminium alloys or copper bus bars with specific configurations of switches, fuses, junction boxes, socket, buses, insulator etc., and mounted on specially designed moulded insulated supports. They use bare conductors. The aluminium bars of required length are arranged in a row, are supported on insulatory supports and kept inside a metal duct. Bus bar is only a part of the bus duct. There are bolted joints to isolate the connection between the equipment. Various cabinets duly fitted with various apparatus, listed above, are joined together. Generally they are fixed between different switchgears, or between the generator and transformers, or between transformer and switchgear for making connections. It is used to connect the switch boards, generator to a transformer, or transformer to the switch board for the purpose of distribution of electricity. The LT bus ducts when fitted with all equipment form a section in motor control centres, and are placed at the top of the cubicle. They appear to be an elaborate product, manufactured to custmers' requirements and specifications. In the cabinet along with the bars, there are other equipment such as junction box switch, thermostate fuse, gasket, adopter flange etc.; of course, the main component is the bus bars.

21. In so far as the product manufactured by VEA is concerned, the aluminium bars of required length are in a row and they are supported by insulators and kept inside a metal duct. According to the assessee, the bus duct is also known as bus trunking. It is used to connect the LT panels. The bus ducts have a number of bolted joints to isolate the connections between the equipment or between the sections of the bus duct itself. Isolating and linking provisions are also in-built in the bus duct. It distributes the load in lesser space. In bus ducts switches are not connected; it is designed for use in the indoor installation. According to the CCE, Allahabad, they connect one Switch panel board to another Switch panel board, for carrying electric current.

22. As mentioned above, in all the three appeals the Revenue had sought to classify the goods under sub-heading No. 8544.00. Sub-heading No.8544.00 of the Tariff under which the Revenue has sought to classify the goods covers 'Insulated (including enamelled or anodised) wire, cable (including coaxial cable) and other insulated electric conductors whether or not fitted with connectors, optical fibre cables made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors." The form in which the excisable goods are before us, they are neither wire nor cable, they are also not insulated electric conductors. Bus bars which are used in the goods under consideration are conductors but the bus bar distribution chamber, LT bus duct or bus duct as presented for assessment could not be considered as a conductor. If bus bars, (which are a heavy rigid metallic conductor used to carry a large current or to make a common connection between several circuits), are alone presented for assessment then, if they are insulated, they could fall under sub-heading No. 8544.00 of the Tariff; but in the cases before us, they have been cut to size, fitted in a chamber, cabinet or a bus duct (enclosure) wherein provision has been made to receive the current from outside and to distribute it to sub-lines. In the case of C&S the cabinet has, in addition, a specific configuration of equipment. Every device through which the electric current passed is not a conductor for the purpose

of sub-heading No. 8544.00. Before their use in any apparatus insulated conductors in the form of bars could be classified under sub-heading No. 8544.00 but after their use in any electrical machinery, apparatus etc., the electric machinery, apparatus etc., as such has to be examined and considered for classification. The insulating material has to cover or coat the conductor itself. The uninsulated conductor if fitted in a housing which is insulated will not become an insulated conductor. It, therefore, appears to us that the classification under sub-heading No. 8544.00 of the Tariff is ruled out in respect of all the products under consideration.

23. Sub-heading No. 8537.00 of the Tariff (under which Ravi Industries and C&S have claimed the assessment of their goods) convers the 'Boards, panels (including numerical control panels) consoles, desks, cabinets and other bases, equipped with two or more apparatus of Heading No. 85.35 or 85.36 for electric control or the distribution of electricity including those incorporating instruments or apparatus of Chapter 90 other than switching apparatus of Heading No. 85.17'.

24. In the case of C&S, the product has been described as Light Tension (LT) bus duct. They are also called Trunking enclosure. According to the appellants the purpose of the bus duct is the distribution of electricity. In a cabinet made of sheet steel/aluminium, bus bars with specific configurations having items like switches, fuses, junction boxes, plugs, lugs etc., are fitted. They form a section generally at the top of the cubicle for motor control centre. Motor control centres are used to control electric motors and other equipment from a central location or where power is to be distributed for different equipment.

It appears from the lay-out drawing of the bus duct given on pages 42-43 of the paper book that the equipment description covers switches, fuses, thermostate space heater, junction box (for connection of space heating supply and other connections) adopter, bend nut, bolt and washer and insulator. Space heater provided is controlled by common switch, fuse and thermostat to be provided in the incoming feeders.

Without fixing all the above apparatus, the bus duct could not be considered as complete. Bus duct manufactured by C & S is in the form of a cabinet and is equipped with the electrical apparatus for making connections in electrical circuits and for the distribution of electricity. In the memo of appeal the appellants have described their product as under : "F. That the learned lower authorities have also failed to appreciate that Heading 85.44 covers insulated wires, cables or insulated conductors whereas the bus ducts use certain conductors which are totally bare and not insulated and that they carry high voltage and high tension currents for the purpose of distribution with switchboard or from one switchboard to another. It is not only that the conductors viz. aluminium bus bars, copper expansion joints, lighting arresters, junction boxes, plugs, lugs and insulators etc., are mounted inside a bus duct in a particular fashion to achieve the end result but the bus duct has a number of bolted joints to isolate the connection between equipment and between section of the bus duct itself. The conductors like aluminium or copper bars in a bus duct are bare and not insulated.

The entire housing or cabinet of the bus duct itself is not insulated as is in the case of items falling under Heading 85.44".

They have also stated in grounds 'J' of their memo of appeal that the issue involved is the classification of LT bus duct and not the bus bar. Bar is a bare conductor and consists of strips with holes whereas the LT bus duct is an apparatus having one of its part as bus bar. The apparatus as a whole could not be taken a conductor and that too insulated conductor for its classification under Heading No. 85.44.

Taking all the relevant considerations into account we consider that the goods manufactured by C&S are rightly classifiable under sub-heading No. 8537.00 of the Tariff.

25. The position, however, appears different in respect of the products manufactured by Ravi Industries and VEA. In the case of Ravi Industries, the goods produced are bus bar distribution chamber, and their function is to receive electricity from the main supply and to transmit it to different consumers/consuming units. It dispenses with the necessity of connecting each consumer or consuming units directly to the main. Through the bus bar distribution chamber (BBDC), the main supply is transmitted through high voltage conductor to

the users.

Higher the voltage, lower the loss. Ravi Industries have stated in their cross objections that the bus bar distribution chamber has a three phase, four wire system. Each phase coupled with bus bar and porcelain supporter working as electrical conductor, is known by a colour of the wire i.e. red wire, yellow wire and blue wire. In addition there is one neutral conductor. The assessee had claimed that "each phase because of the presence of bus bar supported by porcelain insulator works as electrical apparatus /equipment. "They have further stated that each phase is electrical apparatus. This obviously could not be correct. How the phase which is the alternative current of the same voltage could be an apparatus. Three phase denotes supply simultaneously of three separate alternating currents of the same voltage but with phases differing by one-third of a period. The conductors are in the nature of bars, and different bars for different phases are indicated by different colours. The whole of the BBDC is in the nature of an apparatus but the individual bars could not be considered as an apparatus. The assessee had admitted that "for the purpose of classification of product, existence of two or more apparatus of Chapter Heading No. 85.35 or 85.36 is a must", but have not identified as what those apparatus are there in the product BBDC.We find that there is no apparatus of the nature mentioned in sub-heading No. 8537.00 in the BBDC. There is nothing sort of an assembly in the BBDC. We therefore, consider that the goods under consideration are not classifiable under sub-heading No. 8537.00. In the case of Havell's Industries v. CCE -1993 (68) E.L.T. 353 (Tribunal), the Tribunal in para 7 of their order had stated that the contention that "since there are switches put in the cabinet and hence, there are two apparatus housed in a cabinet and accordingly they are classifiable under Tariff Heading No. 85.37" was not convincing.

Although, the assessee had claimed classification under sub-heading No.8537.00, and the Revenue had sought classification under sub-heading No. 8544.00, the respondent Ravi Industries in their communication dated 15-3-1994 to the Tribunal had relied, among others, on the order-in-original passed by the Assistant Collector of CE, Division VII of Bombay II Collectrorate, wherein the adjudicating authority in the case of Stanley Switchgear Products Goregaun, Bombay had classified the BBDC with copper strips under Chapter sub-heading No. 8536.90. He had observed that the bus bar chamber is a mild steel box containing copper strips mounted with nuts and bolts on bus bar support of China clay used to distribute electric current. It does not contain insulated wire cable. It could not be treated as insulated electric conductor; with regard to Heading No. 8544 he had stated that the description of goods under Chapter Heading No. 85.44 does not give clear idea classifying bus bar chamber. He had classified the product bus bar chamber with copper strips under Chapter Heading No. 8536.90. It appears that the goods produced by M/s. Ravi Industries are correctly classifiable under sub-heading No. 8535.00 or 8536.90 depending upon whether the apparatus is for a voltage exceeding 1000 volts or for a voltage not exceeding 1000 volts. The assessee in their cross objections have stated "in the present case three phases with neutral conductor are meant for to form an electrical current for the purpose of receiving and distributing/transmitting electricity for a voltage whether exceeding 1000 volts or not exceeding 1000 volts". The goods produced by Ravi Industries are not covered by sub-heading No. 8544.00 as the conductors are not insulated; they are neither enamelled nor anodised. Further, they are housed and fitted in a distribution chamber. They are further declared to be suitable for HRC fuses. There is nothing on record to show that they could form part suitable for use solely or principally with the apparatus of Heading Nos. 85.35, 85.36 or 85.37. There is no space in the chamber for fitting of additional apparatus. They are electrical apparatus for making connections between electrical circuits. We may also refer to the HSN Explanatory Notes wherein the apparatus for making connections to or in electrical circuits has been described as under :- This apparatus is used to connect together the various parts of an electrical circuit. It includes: (A) Plugs, Sockets and other contacts for connecting a movable lead or apparatus to an installation which is usually fixed. This category include : (1) Plugs and sockets (including those for connecting two movable leads). A plug may have one or more pins or side contacts which match corresponding holes or contacts in the socket. The pin or one of the pins may be used for earthing purpose.

(2) Sliding contacts such as brushes for motors and current-collectors for electric traction vehicles, lifting appliances, etc. (overhead or third rail collectors, etc.) other than such articles of "carbon" or graphite (Heading No. 85.45). They may

consist of block metal, wire cloth or laminated strip, and remain in this heading even when coated with an external lubricating layer of graphite.

(3) Lamp or valve sockets and lamp-holders. Certain lamp-holders are in the form of candles for mounting in candelabra or are designed to form a bracket against a wall; these remain classified here provided their main function is to act as lamp-holder: Plugs and sockets, etc., assembled with a length of wire are excluded (Heading No. 85.44) (B) Other connectors, terminals, terminal strips, etc. These include small squares of insulating material fitted with electrical connectors (dominoes), terminals which are metal parts intended for the reception of conductors, and small metal parts designed to be fitted on the end of electrical wiring to facilitate electric connection (spade terminals, crocodile clips, etc.) Terminal strips consist of strips of insulating material fitted with a number of metal terminals or connectors to which electrical wiring can be fixed. The heading also covers tag strips or panels; these consist of a number of metal tags set in insulating material so that electrical wires can be soldered to them. Tag strips are used in radio or other electrical apparatus.

(C) Junction boxes. These consist of boxes fitted internally with terminals or other devices for connecting together electrical wires.

Junction boxes not fitted with means of electrical connection, but used solely as a protective cover or to hold an insulating compound over a joint made independently, are not covered here, but are classified according to their constituent material." As per the classification opinion on the HSN, the goods falling under sub-heading 8535.90 or 8536.90 have been described as :8535.90 or 2. Prefabricated elements for electrical conduits. Consisting8536.90 of varying number of conductor bars whether or not covered with an insulating material held lengthwise by means of electrical insulators, on a support or in a suitably shaped shealth which may be provided at Accordingly, we consider that the goods produced by Ravi Industries are correctly classifiable under sub-heading 8536.90, if they are for a voltage not exceeding 1000 volts. As we have mentioned above the respondent M/s. Ravi Industries have relied upon the decision of the Assistant Collector of CE, Bombay who had classified similar goods manufactured by M/s.

Stanley Switchgear Products Goregaun, Bombay under sub-heading No. 8536.90. The Hon'ble Supreme Court in the case of Shri Rama Machinery Corpn. Pvt. Ltd. v. C.C.E., 1992 (57) E.L.T. 369 (SC) have held that the alternative classification at Tribunal stage was claimable.

26. VEA have sought classification of the product manufactured by them under sub-heading No. 8536.90. The appellants have described their process of manufacture as under :- "3. The process of making the bus duct in question may be set out.

The appellants buy from outside the duty paid Aluminium/Copper flats or bars which are of uniform in length of 3.6 meters. These aluminium/copper flats are either painted with different colours or sleeved with heat shrinkable sleeving for easy identification of individual phase and neutrals. The ends of the aluminium/copper flats are drilled to provide holes. Two or three such aluminium/copper flats are joined together with aluminium joint plate and bolted. Three or four such joined aluminium/copper flats are arranged on a fabricated angle frame supported by supports made of Dough Moulding compound or sheet moulding compound. Thereafter the angle frame on which the aluminium/copper flats are arranged, is covered by steel sheets with suitable ventilating grills. The grills are covered with perforated sheets. Thus the resultant product is housing or cubicle consisting of bars aluminium/copper flats arranged lengthwise by means of support on a fabricated angle frame.

Each such housing is of length of 3.6 meters. The aluminium/copper flats arranged lengthwise on the housing are called electric conductors. These conductors are also called as Bus Bars. The said bus bars are not insulated. The painting or sleeving provided on the bus bars are only to identify the individual phase and neutrals so that proper connections can be given in electrical circuit.

4. The housing has opening on one side of the entire length to facilitate connections. These cubicles consisting of electric conductors are cleared by the appellants as per the requirements of the customers. For example, if a customer requires 100 meters length of electric conduits, the appellants would supply the required number of cubicles each of fixed length of 3.6 meters. Each

cubicle/housing consisting of electrical conductors which are known as bus bar are, provided with facilities for connections at any end.

Thus each cubicle/ housing consisting bus bar is an electrical apparatus for making connections to or in electrical circuits. These cubicles/housing consisting of bus bars are used in hospitals/sub-station/multi-storeyed buildings where the voltage will not be exceeding 1000 volts." Their product is in the nature of an assembly of bus bars fitted in a housing with opening for connection, but there is no assembly of any apparatus in the nature of switches, fuses, lightening arresters, voltage limiters, surge suppressors, plugs, junction boxes etc. The assessee had described it as "an electrical apparatus which is a cubicle or metal housing consisting of varying number of aluminium/copper flats which are known as bus bars not insulated and held lengthwise by means of electrical insulator supports". They have mentioned that the product in question is also captively consumed in the manufacture of cubicle switch boards incorporating air circuit breakers, switch, fuse units-and combination fuse switches. Once so fitted they become LT panel. In other words, they have stated that the bus duct manufactured by them is captively consumed in the manufacture of LT panels. In the affidavit of Shri Nirmal Roy Choudhary, Properitor of V.E.A. in para 4, the character of bus duct is given as under :- "4. That the appellant company is also engaged in the manufacture of Cubicle Switch Boards incorporating air-circuit breakers, switch fuse units and combination fuse switches. This cubicle is called LT panel. This is the main item manufactured by the appellant company.

In this cubicle, the aforesaid bus duct is used. The bulk of the bus duct manufactured in the aforesaid manner is being used in the LT panel. In other words, the bus ducts made in the aforesaid manner is also captively consumed in the manufacture of LT panels. The bus ducts is also cleared by the appellant's company separately." The Revenue in the written submissions have also described the goods as under :- "5. Considering the above principle and applying the same in the instant case it is clear that the nomenclature of the product is "bus duct'. The item 'bus duct' has not been specifically mentioned in any of the headings. Therefore, only by virtue of nomenclature it may not be possible to classify the goods. Now coming to the second and third aspect of the classification i.e. character and function, it is seen that the character of the product is that of an insulated conductor and- the function of the impugned goods is to conduct electricity from one part of the installation to the other part. It may be from transformer to switch gear or from transformer to any other part as mentioned by the Collector in his adjudication order.

Thus the nomenclature, character and function of bus duct is that of insulated conductor for conducting the electricity without much loss of electricity. The cumulative effect of these three , is covered under Heading 85.44 of the CETA, 1985, and therefore, on these principles also goods merit classification." When the bus ducts are cleared as such, they are without any other item like lightening arresters, surge suppressors, potential transformers etc. In the circumstances, they appear to be properly classifiable under sub-heading No. 8538.00 as parts suitable for use solely or principally with the apparatus of Heading Nos. 85.35, 85.36 and 85.37.

In fact, the appellants have first claimed classification of their product under Heading No. 85.38 of the Tariff, as according to them "these bus ducts are also used in the manufacture of panel boards and distribution boards". In this connection, paras 2 and 6 from their appeal memo are extracted below :- "2. The appellants have classified the bus duct in question under Heading 85.38 as parts suitable solely or principally with apparatus of Heading 85.35, 85.36 or 85.37. The effective rate of duty under this heading during the period from 1987-1991 was 15 % ad valorem.

"6. The appellants have filed classification lists from time to time right from 1986 onwards inter alia classifying the bus ducts under Heading 85.38 as parts suitable for use solely or principally with the apparatus of Heading 85.35, 85.36 or 85.37. The appellants have described the product in question as bus duct in these classification lists. The classification lists, filed by the appellants, have been duly approved by the Assistant Collector classifying the bus ducts under Heading 85.38. Copies of the approved classification lists for the period from 1987 to 1991 are collectively enclosed as Annexure -1." Para 5 of their written submissions dated 18-10-1994 is also extracted below :- "5. The appellants have duly filed classification list for the period in question specifically mentioning the bus duct in their classification list and claimed .classification of these bus ducts under Heading 85.38 of the Central Excise Tariff as these bus ducts are also used in the manufacture of panel boards and distribution boards. Accordingly, the appellants have made a remark in the classification list that the bus ducts are used in the manufacture of panel board and distribution board. (Please refer to classification lists placed at pages 4 to 15 of the paperbook). At Sl. No. 3 of these classification lists the appellants have declared the bus ducts and claimed that these are used in the manufacture of panel board and distribution board and hence bus ducts as a part suitable for use with the apparatus of Heading 85.37 mentioned at Sl. Nos. 1 and 3 of the classification list. These classification lists have been approved by the Assistant Collector without any objection." Again in para 14 of their submissions dated 18-10-1994 they have stated as under :- "14. On the question of limitation, the appellants referred to the approved classification lists, gate pass and assessed R.T. 12 returns etc., wherein they have specifically referred to the description of the product as bus duct and claimed classification under Heading 85.38. It was submitted that the duty was paid on the product in question under Heading 85.38 as per the approved classification lists and hence the question of demanding duty by invoking the extended period of limitation does not arise. The appellants have referred to and relied upon the decisions of the Hon'ble Supreme Court in the case of Collector v. Chemphar Drugs and Liniments(S.C.) and Padmini Products v. C.C.E., 27. Taking all the relevant considerations into account, we order classification of the excisable goods manufactured by Ravi Industries under subheading No. 8535.00 or sub-heading No. 8536.90 depending upon the fact whether the apparatus is for voltage exceeding 1000 volts, or Voltage not exceeding 1000 volts. The goods manufactured by C&S are classified under sub-heading No. 8537.00 and those manufactured by V.E.A. under sub-heading No. 8538.00. The demands for CE duty should be worked out accordingly.

28. In the circumstances, the charge of suppression against V.E.A. is not sustainable and the demand for Central Excise Duty, if any, is demandable only for the period of six months from the date of issue of the show cause notice. The penalty of Rs. 1.50 lakhs is also set aside.

All the appeals and the cross-objections are disposed of accordingly.