
(2021) 04 CESTAT CK 0033

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 2066 Of 2010

M/s. Continental Automotive Components (India) Pvt Ltd	APPELLANT
Vs	
C.C-The Principal Commissioner Customs Bangalore	RESPONDENT

Date of Decision : 26-04-2021

Acts Referred:

Citation : (2021) 04 CESTAT CK 0033

Hon'ble Judges : S.S. Garg, J;P. Anjani kumar, Technical Member

Bench : Division Bench

Advocate : Ravi Raghavan, Narendrababu P Byahatti

Final Decision : Allowed

Judgement

1. The present appeal is directed against the impugned order dated 30.07.2010 passed by the Commissioner of Customs (Appeals), Bangalore whereby the Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order of the original authority.

2. Briefly the facts of the present case are that the appellants are engaged in the business of development/manufacturing of components and systems for vehicles and providing the most modern automotive technologies to all the major brand in India. The appellant, for the purpose of its business of manufacture of such products, imported 576 pieces of LCDModule from Sanghai, China in six cartons, totally valued at Rs.5,93,918/- and filed a Bill of Entry No.225811 dated 22.09.2009 at Air Cargo Complex, Bangalore, classifying the said item under CTH 90139010 having a Nil rate of BCD. The said bill of entry was facilitated through the RMS and the officers of SIIB, Bangalore took up this bill of entry for further verification and after obtaining documents from the appellants, consignment was opened and examined in detail by the SIIB officers. Thereafter, a personal hearing was granted to the appellants wherein the appellants submitted technical write up for LCD stating that they are used in the instrument clusters manufactured by the appellant, which instrument clusters in turn, displays the

main Kilometer reading, day trip reading and clock. Thereafter, the appellant received Order-in-Original dated 12.10.2009 holding that LCD modules imported by the appellant shall be classified under CTH 90299000 as parts of speedometer and charged to duty at 10% as applicable to this CTH and also vacating the appellant's claim for duty paid under protest. Aggrieved by the said order, the appellant filed appeal before the Commissioner taking various grounds and the Commissioner vide the impugned order rejected the appeal mainly on the ground that the impugned goods are specially and solely meant for use in speedometer and they are not simple LCD. Aggrieved by the said order, the appellant filed appeal before us.

3. Learned Counsel for the appellant submitted that the impugned order passed by the Commissioner is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that learned Commissioner of Customs (Appeals) has rejected the appeal of the appellant mainly relying upon the decision of the Hon'ble CESTAT, Delhi in the matter of Secure Meters Ltd. Vs Commissioner of Customs, New Delhi (2004-VIL-18-CESTAT-DEL-CU). The said decision of the Hon'ble Tribunal was challenged before the Hon'ble Supreme Court and the Hon'ble Apex Court vide its order dated 05.05.2015 in the matter of Secure Meters Ltd. vs Commissioner of Customs, New Delhi reported in 2015 (319) ELT 565 (SC) has reversed the order of the Tribunal and allowed the appeal filed by the Appellant therein and held that LCDs imported by the said Appellant were classifiable under chapter heading 9013.80 as liquid crystal devices. He further submitted that this issue is no more res integra after the decision of the Hon'ble Apex Court in the Secure Meters Ltd. case. He also submitted that LCD is used to display various information according to its application. The LCD, driven by microcontroller, is used in the instrument clusters manufactured by the appellants, which in turn displays the Main Kilometer reading, Day Trip Reading & Clock. It is his further submission that as per Rule 1 of General Rules of Interpretation, classification shall be determined according to the terms of the heading of any relevant section or Chapter Note. It is evident that LCDs are specifically provided in Tariff Item 9013. Moreover, as per Note 2(a) attached to Chapter 90, parts and accessories, which are goods included in any of the headings of said Chapter 90 are to be classified in their respective headings and accordingly, LCDs imported by the Appellant therein classified under Chapter Heading 9013.90 not under CTH 9029.90 as parts and accessories of speedometer. He further submitted that after the decision of the Hon'ble Supreme Court in the case of Secure Meters Ltd. V. Commissioner of Customs, New Delhi (cited supra), similar products have been held to be classifiable under Tariff Item 9013. He cited the following decisions:

- Varroc Engineering P. Ltd. V. C.C. (Import), Nhava Sheva, Raigad 2019 (366) ELT 170 (Tri.-Mumbai)
- Samsung India Electronics P. Ltd. V. Commissioner of Customs, Noida 2015 (3260 E.L.T 908 (Tri.-Del.)

· Moser Baer India Ltd. V. Commissioner of Cus. & C.Ex., Noida 2018 (361) ELT 908 (Tri.-All.)

· Samsung India Electronics P. Ltd. V. Commissioner of Customs (AIR), Chennai 2016 (337) E.L.T 87 (Tri.-Chennai)

4. On the other hand, learned AR defended the impugned order and submitted that the impugned goods are not merely liquid crystal but a LCD module with inbuilt circuit and the said goods merit classification under CTH 90299000. LCDs have been assembled into a module solely for use in speedometer.

5. After considering the submissions of both the parties and perusal of the material on record, we find that the appellant has imported 576 pieces of LCD modules and accordingly filed bill of entry giving the details of the same and the goods were physically examined by the officers of SIIB and the stand of the appellant from the very beginning was that as per the technical write up, which was submitted to the Department, clearly shows that these LCD are used in the instrument cluster manufacture by the appellant and which instrument cluster in turn disclosed the main Kilometer reading, Day Trip reading and Clock and all these details are matched with the details in bill of entry. We also find that the original authority, in spite of technical details given by the appellant, did not seek technical opinion before passing the Order-in-Original and has also failed to explain in its Order as to why the subject goods are different from plain LCDs. We also find that the Order-in-Original was passed without issuing the SCN which is also in violation of principles of natural justice, in view of the decision in the case of Zinc Products Vs UOI, 1992 (57) ELT 222 (mad). We also find that LCDs are specifically provided in Tariff Item No. 9013 and as per Note 2(a) attached to Chapter 90, parts and accessories which are goods included in any of the Heading of the said Chapter 90 are to be classified in their respective Headings. Here we may also take note of the Chapter Headings:

Rate of Duty

9013

Liquid crystal devices not constituting articles provided for more specifically in other headings, lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this Chapter

9013 80 10

--- Liquid crystal devices (LCD)

Free

9013 80 90

---Other

7.5%

9013 90

-Parts and accessories

9013 90 10

--- for liquid crystal devices (LCD)

Free

9029

Revolution, counters, production counters, taximeters, mileometers, pedometers and the like; speed indicators and tachometers, other than those of heading 9014 or 9015; stroboscopes

90299000

---parts and accessories

7.5%

5.1. We also note that appellants have been earlier importing the said items and the appellants vide its letter dated 30.11.2009 informed the Customs Authorities that since April 2009, they had seven instances of import of LCD and in five of them, the item was correctly dispatched as Liquid Crystal Display and in the remaining two, though, the imported item was merely a Liquid Crystal Display which was mentioned as LCD module incorrectly and that the imported LCDs were used in the manufacture of instrument cluster and that these are not part of speedometer. We also find that the impugned order was passed mainly relying upon the decision in the case of Secure Meters (cited supra) which on appeal, the Hon'ble Apex Court has set aside the same and this issue was considered by the Division Bench of this Tribunal in the case of Varroc Engineering Pvt. Ltd. Vs CC (Import) cited supra. It is pertinent to reproduce the said findings in Para 9 which is as under:

9. So far as the decision of this Tribunal in the matter of Secure Meters Ltd., (supra) is concerned, relying upon which the Commissioner has rejected the appeal of the Appellant, we have been informed that the said decision of this Tribunal was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide its order dated 5-5-2015 in the matter Secure Meters Ltd. v. Commissioner of Customs, New Delhi reported in 2015 (319) E.L.T. 565 (S.C.) set aside the order of the Tribunal and allowed the appeal filed by the Appellant therein and held that LCDs imported by the said Appellant were classifiable under chapter heading 9013.80. In that matter the component involved was LCD for the purpose of using the same in the manufacture of electricity supply meters (energy meters) and the Hon'ble Supreme Court has held that LCDs imported by the Appellant therein classified under Chapter Heading 9013.80 i.e. devices, appliances and instruments and not under 9028.90 which provides for the parts and accessories of electricity meters. The Hon'ble Supreme Court while deciding

the issue has also gone into the definition of LCD and observed as under :-

"14. In Bloomsbury Dictionary of 'Science for Everyone', LCD and LED (Light Emitting Diode) are described in the following manner :

"LCD AND LED

The two principal methods of forming numbers and letters on instruments such as calculators and digital watches. A basic pattern of seven bars is used to form the digits 0 to 9 and several letters. To form other letters and symbols, more than seven bars are required.

In the LED (Light-Emitting Diode), the bars are made of a substance that permits an electric current to flow through in one direction only. A substance used in this way is called a diode. As the current flows, the diode gives off red, blue, yellow, or other coloured light, depending on the compound of which it is made. For example, Gallium Phosphide (GaP) emits a green glow. Electric circuits in the instrument selectively turn on the current to the bars to form the various numbers and letters. In the LCD (Liquid Crystal Display), the bars are made of liquid crystals. These are a kind of hybrid material, not quite a liquid and not quite a solid. They can't be poured readily, as with liquids, nor are their molecules locked in place, as with true solids. But the molecules can be rotated slightly by an electric current. When no current flows, the bars are not noticeable, because they reflect light to the same extent as the rest of the display surface. But when a current flows through a bar, its molecules rotate and its ability to reflect light is reduced. That bar appears darker than the area around it and forms part of a number or letter.

You can produce a similar darkening effect, called polarization, with Polaroid sunglasses. Hold the glasses several centimeters from one eye and look through one lens at a shiny, sunlit surface. Rotate the lens and observe the darkening.

Liquid crystals can be made to order to do a particular job. For example, one kind of crystal is sensitive to slight temperature changes. It is used in thermometers where the number representing the temperature appears, then disappears, to be succeeded by a higher or lower number as the temperature changes."

The basic pattern of digits or letters which is formed in these LCDs is as follows :

0 1 2 3 4 5 6 7 8 9

A C E F H I J L P U

As is clear from the above, in the LCD the bars are made of liquid crystals which are neither liquid nor solid entirely, but a hybrid material of the two. The molecules are rotated slightly by electric current making a particular bar darker than the area around it thereby forming part of a number or letter.

The Hon'ble Supreme Court further held as under :-

17. In *Collector of Central Excise v. Delton Cables Ltd. & Anr.* - (2005) 12 SCC 284 = 2005 (181) E.L.T. 373 (S.C.) this Court has held, while interpreting Notes 2(a) and 2(b) of Chapter Heading 85, which is virtually to the same effect, that Note 2(b) would apply only if the items in question were not specifically classifiable under their respective headings. Para 4 of the said judgment, to this effect, reads as under :

"4. It is clear from a reading of the two clauses to the section note that clause (b) would only apply once it was found that the items in question were not specifically classifiable under their respective headings. As has been clearly said by the Collector (Appeals)

"from the sequence of the paragraphs given under Section Note 2 it is clear that the question of switching over to Section Note 2(b) can arise only after ensuring that the parts are not covered by Section Note 2(b) [sic Section 3 Note 2(a)] which begins with the expression "other parts" meaning thereby that the parts which are not covered by Section Note 2(a) would be considered for coverage by Section Note 2(b). One cannot therefore, directly jump over to Section Note 2(b) without exhausting the possibility of Section Note 2(a)."

18. The aforesaid view of ours gets strengthened from Part-III of Chapter Notes to Chapter 90. We may mention here that after studying the Chapter Notes, Note 2 whereof is reproduced above, there are certain guidelines provided under the caption 'General'. Part-I thereof deals with General Content and Arrangement of the Chapter; Part-II deals with Incomplete or Unfinished Machines, Apparatus, etc.; and Part-III deals with Parts and Accessories. We fire reproducing here this portion in order to show how it supports the view which we have proposed to take as indicated above :

"(III) Parts and Accessories

Subject to Chapter Note 1, parts or accessories identifiable as suitable for use solely or principally with the machines, appliances, instruments or apparatus of this Chapter are classified with those machines, appliances, etc. This general rule does not, however, apply to :

(1) Parts or accessories which in themselves constitute articles falling in any particular heading of this Chapter or of Chapters 84, 85 or 91 (other than the residual Headings 84, 85, 85.48 heading 84.14; transformers, electromagnets, capacitors, resistors, relays, lamps or valves, etc., remain classified in Chapter 85; the optical elements of Heading 90.01 or 90.02 remain in the headings cited regardless of the instruments or apparatus to which they are to be fitted; a clock or watch movement is always classified in Chapter 91; a photographic camera falls in Heading 90.06 even if it is of a kind designed for use with another instrument (microscope, stroboscope, etc.)

(2) Parts or accessories suitable for use with several categories of machines, appliances, instruments or apparatus falling in different headings of this Chapter

are classified in Heading 90.33, unless they are in themselves complete instruments, etc., specified in another heading (see paragraph (1) above)."

19. This contains a general explanation to Chapter Note 2 and mentions that where parts or accessories identifiable as suitable for use solely or principally with the machines, appliances, etc., they are to be classified with those machines/appliances. However, what is important is that immediately thereafter it is clarified that this general rule would not apply in certain circumstances. Sub-para of the above takes things beyond the pale of any doubt by making it crystal clear that those parts and accessories which in themselves constitute 'article' falling in any particular heading of this Chapter, the general rule will not apply and said article would fall in that particular heading. To demonstrate this, examples which are given, eminently fit into the case at hand.

20. The aforesaid view of ours gets further cemented on going through Explanatory Notes issued by the World Customs Organization. Volume 4 of the Second Edition (1996), which covers Chapters 85-97, contains explanatory note in respect of item mentioned at 90.13, with which we are directly concerned herein. Relevant portion thereof reads as under :

"90.13

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Liquid crystal devices not constituting articles provided for more specifically in other headings : lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter.

9013.10

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Telescopic sights for fitting to arms; periscopes; telescopes designed to form parts of machines, appliances, instruments or apparatus of this Chapter or Section XVI.

9013.20

-

Lasers, other than laser diodes.

9013.80

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Other devices, appliances and instruments.

9013.90

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Parts and accessories.

In accordance with Chapter Note 5, measuring or checking optical appliances, instruments and machines are excluded from this heading and fall in Heading 90.31. Chapter Note 4, however, classifies certain refracting telescopes in this heading and not in Heading 90.05. It should, moreover, be noted that optical instruments and appliances can fall not only in Headings 90.01 to 90.12 but also in other headings of this Chapter (in particular, Headings 90.15, 90.18 or 90.27). This heading includes :

(1) Liquid crystal devices consisting of a liquid crystal layer sandwiched between two sheets or plates of glass or plastics, whether or not fitted with electrical connections, presented in the piece or cut to special shapes and not constituting articles described more specifically in other headings of the Nomenclature.

xx xx xx xx"

As per this, LCD would be covered by 'other devices' mentioned in 9013.80. That is precisely the case of the appellant.

21. The upshot of the aforesaid discussion leads to the conclusion that the view taken by the Tribunal in the impugned judgment is unsustainable in law. We, thus, allow the appeal, set aside the orders of the authorities below and hold that LCDs imported by the appellant were classifiable under Chapter Heading 9013.80."

6. We also find that this decision of the Hon'ble Apex Court has been followed by the Tribunal in number of decisions cited supra by the appellant wherein similar products have been held to be classifiable under Tariff Item 9013. By following the ratio of the Hon'ble Apex Court decision in the case of Secure Meters (cited supra) relied upon by the appellant and also considered by the Tribunal in various decisions, we are of the considered opinion that the impugned order classifying the said goods under 90299000 is not legally sustainable and we set aside the same by allowing the appeal of the appellant with consequential relief, if any.

(Order pronounced in the open court on 26/04/2021)