(2015) 07 CESTAT CK 0016

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 173 Of 2011

M/s. Denso Haryana Pvt. Ltd. APPELLANT

Vs

C.C. (I & G), New Delhi RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Citation : (2015) 07 CESTAT CK 0016

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Ramesh Sharma, Govind Dixit

Final Decision : Allowed

Judgement

1. Appeal has been filed against Order-in-Appeal dated 07.02.2011 in terms of which 336 oxygen sensors valued at Rs.2,28,491/- imported by the

appellant were held to be classifiable were CTH 9027 1000 while appellant claimed the classification under 90318000.

As the dispute in this case is regarding classification, the said two competing headings are reproduced below for convenience:-

CTH 9027.10.00 of the lmport Tariff

9027 Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke

analysis apparatus); instruments and apparatus for measuring or checking viscosity porosity, expansion, surface tension or the like;

instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); mictrotomes.

9027.10.00 - Gas or smoke analysis apparatus

9027.20.00- ....

90.31 - Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this Chapter; profile

projectors.

â?¦

9031.80- Other instruments, appliances and machines

9031.90 - Paris and accessories

2. The appellant has contended that the sensors in question are not instruments or apparatus for physical or chemical analysis nor are they instruments

or apparatus for measuring or checking viscosity, porosity expansion surface tension or the like. These are also not instruments and apparatus for

measuring or checking quantities of heat, sound or light. The appellant explained as under:-

The oxygen sensor is positioned in the exhaust pipe. The mechanism in the oxygen sensor involve use of platinum electrode in which

zirconium electrolyte is inserted and electricity is generated by the difference in the oxygen concentration of the two sides, the electrical

signal thus generated is passed to Engine Control Unit (ECU) to determine if mixture is rich or Jean, and thus adjusts the flow of fuel to

engine accordingly. Rich mixture is caused by the incomplete combustion of fuel in the engine leading to emission of raw gases

(hydrocarbons), carbon monoxide and also nitrogen oxide when combustion temperature is very high.

Lean Mixture: When the combustion of gases generated due to burning of fuel in engine is optimum (stoichiometric or theoretical

combustion) i.e., HC & CO are Jess likely to be generated when air fuel mixture is lean, however, excessively lean mixture result in engine

misfire and increase the hydrocarbon, NOx. Using the Stoichiometric air fuel ratio as base, 1V is output from oxygen sensor for rich air fuel

ratio and approximately OV for a lean ratio.

Working Principle: Oxygen sensor has Zr02 solid electrolyte which works as oxygen ionic conductive material at more than 300Â°C. when

the air is introduced into the sensor, Zr02 solid electrolyte reacts on a difference in oxygen concentration between atmosphere and exhaust

gas side which generate electromotive forces as a concentration cell.

It also submitted the extract from Wikipedia to press home the point that these sensors are not measuring devices. It also cited the judgement in the

case of Pentax Engineering Pvt. Ltd. Vs. CC, Bombay [1998 (99) EL T 368 (Tri.)]. CESTAT judgement in the case of Vasta Marketing Vs. CC,

Chennai [2010 (253) ELT 129 (Tri - Chennai)] was also cited by the appellant.

3. The Id. Departmental Representative, on the other hand, stated that the impugned goods are nothing but an instrument for physical analysis and is

also a measuring instrument and therefore it falls under Chapter Heading 9027. Ld. Departmental Representative also stated that Chapter Heading

9031 covers measuring or checking instruments, appliances and machines which are not specified or included elsewhere in the chapter. The Id.

departmental representatives also referred to the opinion of U.S. Customs number HQ 950405 dated 20.08.1992 in its support.

4 We have considered the contentions of both sides. The goods involved are oxygen sensors. Sensor is a general name for detecting device used to

locate or detect presence of matter or energy. Apart from The explanation given by the appellant, Wikipedia write-up on oxygen sensors

(http://en.wikipedia.org/wiki/oxygen_sensor), clearly records that ""oxygen sensors do not directly measure the air or the fuel entering the engine.

But when information from oxygen sensors is coupled with information from other sources it can be used to indirectly determine the air to

fuel ratio"". As per the same Wikipedia page, ""oxygen sensor is an electronic devise that measure the proportion of oxygen in the gas or

liquid."" Thus it is obvious that oxygen sensors are not instruments or apparatus for physical or chemical analysis as they do not do any analysis and

are not capable of doing so either. Indeed, these are quite unlike polarimeters, refractomters, spectrometers, gas or smoke analysis apparatus which

are mentioned as examples in the said Chapter Heading 9027. These sensors also cannot be said to be instruments and apparatus for measuring or

checking viscosity, porosity, expansion surface tension or the like because what they do is nothing at all like checking viscosity porosity, expansion or

surface tension. These also do not check the quantities of heat, sound or light. Thus, the impugned goods do not belong to Chapter Heading 9027.

Once their classification under Chapter Heading 9027 is ruled out, they would land up under CTH 9031 as admittedly that is the only competing entry.

5. Revenue relied upon the HSN Explanatory Notes under chapter 9027 to say that gas or smoke analysis apparatus is covered under chapter heading

9027. But the fact is that the impugned goods are not gas or smoke analysis apparatus; they are merely sensors. On the other hand we find that as per

HSN Explanatory Note under chapter heading 9031, ""apparatus for testing and regulating vehicle motors, for checking all parts of the ignition system,

for ascertaining the best carburettor setting (by analysing exhaust gases) or for measuring the compression in the cylinders"" are covered thereunder.

The sensors in question are essentially a part or component of the apparatus for ascertaining the best carburettor setting as these sensors enable such

apparatus to detect the oxygen levels in the exhaust gases.

6. We find that the opinion of U.S. Customs cited by the Id. Departmental Representative was in respect of a different product namely, â??sensidyne

gas detector tubesâ? and â??gas decometer tubes. Further, the opinion of customs administration of another country is not binding on the other

customs administrations. On the other hand, we find that in the case of Pentax Engineering Pvt. Ltd. (supra) it has been held as under:-

3. We have gone through the facts on record and have perused the technical literature filed by the appellants. The goods imported had

been described as Sensor Lower Explosive Limit Catalytic. The appellants were engaged in the manufacture of Pantex Gas Detection and

Monitoring System. Admittedly, the Sensor imported was a part of the gas detection and monitoring system. The gas detection and

monitoring system was classifiable under Heading No. 85.31 of the Tariff, which covered electric sound or visual sound apparatus. As

explained by the Consultant, the role of Sensor was to detect the level of the explosive gas etc. and to sound the alarm although at a

distance as and when the level of the explosive gas, etc. reach a particular level. We consider that taking independently the sensor was

neither an instrument nor apparatus for physical or chemical analysis; nor it could measure or check. guantity of explosive gas. etc. We

consider that when the gas detection and monitoring system as a whole was not classifiable under Heading No. 90.27 of the Tariff. the parts

in this case. the sensor could not be covered by the sub-heading No. 9027.90 of the Tariff."" (emphasis added)

Thus, the ratio of this judgement [Pentax Engineering Pvt. Ltd. (supra)] is clearly applicable to the present case supporting the view that the impugned

goods are not classifiable under CTH 90.27.

7. In the light of the analysis above, we are of the view that the impugned goods are more appropriately classifiable under Chapter Heading 9031 of

Customs Tariff. Accordingly, we allow the appeal.

