(2024) 01 CESTAT CK 0048

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 85887 Of 2023?????????

Pelf Power Electronics Private Limited APPELLANT

Vs

Commissioner Of Customs (Import), JNCH RESPONDENT

Date of Decision : 01-01-2024

Acts Referred:
Customs Act, 1962 — Section 46(4), 46 (4A), 111(d), 112(a)(i)
Bureau Of Indian Standards Act, 1986 — Section 14

Citation : (2024) 01 CESTAT CK 0048

Hon'ble Judges : S.K. Mohanty, Member (J);M.M. Parthiban, Member (T)

Bench : Division Bench

Advocate : N.D. George, Ram Kumar

Final Decision : Allowed

Judgement

M.M. Parthiban, Member (T)

1. This appeal has been filed by M/s Pelf Power Electronics Private Limited, Pune (herein after, referred to as 'the appellants'), assailing Order-in-Appeal No. 404(Gr.VA)/2023(JNCH)/Appeals dated 12.04.2023 (herein after, referred to as 'the impugned order') passed by the learned Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House (JNCH), Nhava Sheva, Mumbai-II.

2.1. Briefly stated, the facts of the case are that the appellants herein is a wholesale trader of semiconductor and allied components; they also import various components and parts for supplying the same to various domestic manufacturers. In one such import of 'CRE Film Capacitor AKMJ-MC – 200UF and 400UF', the appellants had filed Bill of Entry (B/E) No. 7500016 dated 15.02.2022 classifying the same under Customs Tariff Item 8532 2990 paying applicable import duty. The self-assessed B/E was facilitated under Risk Management System (RMS) and assessment and examination was not prescribed under RMS based clearance; however, during scrutiny of the subject B/E by Customs officer at RMS Cell, JNCH, he had raised a query to the appellants seeking to know whether the said imports are in compliance with quality control requirements as per BIS Indian Standard for IS 13340 applicable for the imported item of electrical capacitor. On this question, the appellants had replied that the imported goods are ‘dry type capacitor’ and the requirement of BIS standard IS 13340 apply only to ‘power factor correction and power factor capacitor’ which are normally oil filled and these capacitor are of different type than the one presently under import by them. The department disputed the claim of the appellants and the goods were physically examined and based on the examination report and other details submitted by Docks Customs Superintendent, the original authority i.e., Deputy Commissioner of Customs, Appraising Group V-A, JNCH, Nhava Sheva-V had absolutely confiscated the impugned goods for having violated the provisions of Section 111(d) of the Customs Act, 1962 and imposed penalty under Section 112(a)(i) ibid. The appellants had filed an appeal against the aforesaid order before the appellate authority. The learned Commissioner of Customs (Appeals) while deciding the case, had confirmed the order of the original authority both on account of confiscation of the impugned goods and for imposition of penalty. Being aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3.1. Learned Advocate for the appellants contended that the imported goods are film capacitors which are utilized for power electronics application i.e., in the manufacture of products such as UPS, Inverter, Solar inverters, Wind inverter by incorporating the same as a part of the power supply equipment. Hence, he stated that these capacitors are not covered under the scope of BIS Standard IS13340. He also submitted that these capacitors have been purchased for supply to M/s Fuji Electric Consul Neowatt Pvt. Ltd. for consumption as filter capacitor in power electronics equipment. Therefore, he stated on this account of being used as a part of power supply equipment also, the BIS certification is not required in respect of the impugned products. He also stated that the said manufacturer have also given a letter certifying the same to the Customs authorities which has not been considered by the original and appellate authorities. They also stated that the appellants have not violated any of legal requirements under BIS or other law and the impugned order thus not sustainable.

3.2. In support of their stand, the learned Advocate relied upon the scope and exclusion clauses of BIS standard IS 13340:1993 to state that capacitors to be used in various types of electrical equipment as components and capacitors used in power electronic circuits are excluded from the scope of the above said BIS standard.

4. Learned Authorised Representative (AR) reiterated the findings made in the impugned order and stated that the imported goods are capacitors which are used in power electronic equipment as AC filters. But the impugned capacitors are also used for the purpose of power factor correction. On the basis of average

weight of the capacitor worked out at 3.46 kg. per unit, he stated that the appellants have failed to prove as how such a big capacitor can be installed on electronic circuits, to claim exclusion from the application of BIS standards. Further, he also stated that as the appellants are traders, they will not be able to control the use of capacitors as components, after these are being sold, in order to ensure that they are used only as a parts of power supply equipment to claim exemption from applying the requirements of BIS 13340. Thus, learned AR justified the action of Commissioner of Customs (Appeals) in confirming the original order for confiscation of imported goods and for imposition of penalty.

5. Heard both sides and perused the case records.

6.1. The issue involved herein is to decide whether the appellants in import of the impugned goods viz., 'CRE Film Capacitor AKMJ-MC – 200UF and 400UF', have violated the legal requirements of Electrical Capacitor (Quality Control) Order, 2017 inasmuch as the impugned goods does not carry BIS standard compliance certification and whether the impugned goods are liable for confiscation under Section 111(d) ibid.

6.2 We find that the legal requirements which have been not complied with by the appellants have arisen from the compliance requirements under Electrical Capacitor (Quality Control) Order, 2017 which have been issued by the Government of India, in exercise of the powers vested under Section 14 of the Bureau of Indian Standards Act, 1986. The extract of the relevant provisions of the above Act of 1986 and the Order of 2017 are as follows:

"14. Compulsory use of Standard Mark for articles and processes to certain scheduled industries.--

If the Central Government, after consulting the Bureau, is of the opinion that it is necessary or expedient so to do, in the public interest, it may, by order published in the Official Gazette,-

(a) Notify any article or process of any scheduled industry which shall conform to the Indian Standard; and

(b) Direct the use of the Standard Mark under a license as compulsory on such article or process.

Explanation.- For the purpose of this section, the expression "scheduled industry' shall have the meaning assigned to it in te Industries (Development and Regulations) Act, 1951."

"Electrical Capacitors (Quality Control) Order, 2017:

3. Prohibition of manufacture, storage, sale and distribution etc._

(1) No person shall by himself or through any person on his behalf manufacture, import, store or store for sale, sell or distribute any electrical capacitors, which do not conform to the specified standards and which do not bear Standard Mark

of the Bureau:

Provided that nothing in this order shall apply in relation to export of Electrical Capacitors meant for export, which conforms to any specification required by the foreign buyer.

(2) The Sub–standard or defective electrical capacitors which do not conform to the specified standard shall be so identified and destroyed beyond use within a month from the date of manufacture.

4. Obligation for Certification._

(1) All manufacturers of electrical capacitors shall make an application to the Bureau for obtaining licence for use of the Standard Mark, if not already obtained

xx xx xx xx xx xx

8. Complaints of directions._ Every person engaged in the manufacture, import, storage for sale, sale or distribution of any electrical capacitors specified in the Schedule to whom any action is issued under this Order, shall comply with such directions.

SCHEDULE

Sr.

IS No.

Title

1.

IS 2993

A.C. motor capacitors

2.

IS 13340

Power capacitors of Self healing Type for AC Power Systems having Rated Voltage upto 650V

3.

IS 13585 Part I

Shunt Power capacitors of the Non-Self Healing Type for AC Systems having a Rated Voltage upto and including 1000V

PART ONE GENERAL PERFORMANCE TESTING AND RATING SAFETY REQUIREMENTS GUIDE FOR INSTALLATION AND OPERATION”

6.3. We find that the Commissioner of Customs (Appeals) had given a finding that the imported goods are power capacitor of self-healing type covered under

IS 13340 : 1993, on the basis of his careful perusal of the facts of the case, documents on record and the submissions made by the appellants. Further he had also given a finding that the goods mentioned in the impugned Bill of Entry and invoice are mis-declared, and therefore he concluded that the appellants have mis-declared with an intention to import sub-standard goods without fulfilling the mandatory BIS requirement and thus the appellants had violated the provisions of Section 46(4) and 46 (4A) ibid and hence he decided that the goods became liable for confiscation. The learned Commissioner (Appeals) also held that the impugned goods are liable for confiscation under Section 111(d) ibid and the same cannot be allowed for redemption fine as these are 'prohibited goods'.

7. We find from the factual matrix of the case, that the imported goods have been clearly described by the appellants in the B/E No. 7500016 dated 15.02.2022 as 'CRE Film Capacitor AKMJ-MC – 200UF +/-5% 330VAC' - 90 nos. and 'CRE Film Capacitor AKMJ-MC – 400UF +/-5% 330VAC' – 231 nos. providing other relevant details of import such as name of the supplier as 'Wuxi Cre New Energy Technology Co. Ltd., Jiangsu, China' and the invoice no. 'CREPP 220106 dated 06.01.2022', classifying the goods under CTI 8532 2990 etc. We further find from the commercial invoice No. CREPP220106 dated 06.01.2022, that the description of the goods and other specifications have been matching with the details submitted by the appellants in the B/E. Further there is no dispute in respect of quantity, valuation/unit price of the imported goods. The name of the buyer/consignee has been specifically mentioned in the said commercial invoice as 'Pelf Power Electronics Pvt. Ltd.'. From the above factual details, it transpires that the declaration made by the appellants in the B/E exactly matches with the details given in the commercial invoice of the supplier. Thus, we are unable to appreciate how and on what basis, the learned Commissioner (Appeals) had come to the conclusion that there was mis-declaration in respect of the description of the goods. In fact such an assertion in the impugned order is contrary to the facts of the case on record.

8.1 Further, from the above legal provisions of the Electrical Capacitor (Quality Control) Order, 2017, as detailed in paragraph 6.2 above, it also transpires that 'power capacitors', irrespective of whether self-healing type of IS 13340 or Non self-healing type of IS 13585 Part-I, are covered under the said Order of 2017. Thus in order to appreciate the scope of power capacitors of self – healing type covered under the said Order of 2017, we have perused the same in detail, as extracted below:

8.2 From the plain reading of the text given under the 'Scope' at paragraph 1.1 and 1.2 of IS 13340 : 1993, it can be clearly concluded that the BIS standard is inter-alia applicable to self-healing capacitor units. However, under the exclusion categories 11 type of capacitors have been specified. These inter-alia include "(g) Capacitors to be used in power electronic circuits" and "(k) Capacitors intended to be used in various types of electrical equipment and thus considered as components". In the case of the imported goods by the appellants, the factual details submitted clearly prove that M/s Fuji Electric Consul Neowatt Pvt. Ltd. is buying the capacitors of specific description 'Film Capacitor AKMJ-MC – 200UF of 330v' and 'Film Capacitor AKMJ-MC – 400 UF of 330v' for manufacture of various products such as Line Interactive UPS, Single Phase UPS, Three Phase UPS, Solar Inverters, Power Conditioning Solutions, Static Transfer Switch & PDU etc. inasmuch as their letter dated 25.02.2022, specifically makes a request for clearance of this shipment covered under the impugned order as early as possible, as the imported equipment are required for UPS systems for critical medical application which are held up due to shortage of the above supply by the appellants. The above facts clearly prove that the imported CRE film capacitors are meant for use as components in the power supply equipment manufactured by M/s Fuji Electric Consul Neowatt Pvt. Ltd. Thus, in terms of paragraph 1.2 (k) of the IS 13340 : 1993, the imported goods are excluded from the scope of coverage as well as compliance with the requirements of IS 13340, as the same are specifically kept out of the items for which of such standards would apply.

9. From the above, we find that appellants have duly filed the B/E in respect of the imported goods and paid the applicable customs duties. It is not the case of the Department, that there was any issue of mis-declaration other than those with respect to the compliance of IS 13340 : 1993. Inasmuch as, the imported goods are specifically excluded from the scope of IS 13340 : 1993, we find that the requirements under Electrical Capacitor (Quality Control) Order, 2017 is also not applicable in the present case. Thus, we are of the view that the alleged violation of 111(d) ibid, as concluded in the impugned order is not sustainable. Thus, we are of the considered view that the conclusion arrived by the learned Commissioner of Customs (Appeal) in the impugned order is not supported by any evidence or factual detail, to fasten the liability on the part of the appellants for confiscation of the imported goods or for imposition of penalty on the appellants.

10. In view of the foregoing discussions, we do not find any merits in the impugned order passed by the learned Commissioner of Customs (Appeal), in confirming the absolute confiscation of goods and imposition of penalty, inasmuch as there is no violation of Section 111(d) ibid, and the findings in the impugned order is contrary to the facts on record. In the result, by setting aside the impugned order, we allow the appeal in favour of the appellants.