IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.E/566, 856-857/2009, 2597-2598/2010 & 888-889/2011-EX[DB]

Sl. No.	Appeal No. (s)	Appellant (s)	Respondent (s)	Impugned Order Nos. date & passed by
1.	E/566/2009	CCE, Noida	M/s Indo Asian Fusegear Ltd.	O-I-O-48/Commr./NOI/2008 dated 08/12/2008 passed by CCE, Noida
2.	E/856/2009	M/s Indo Asian Fusegear Ltd.	CCE, Noida	-do-
3.	E/857/2009	Mrs. M.S. Karolia	CCE, Noida	-do-
4.	E/2597/2010	CCE, Noida	M/s Indo Asian Fusegear Ltd.	O-I-A-148-149-CE/APPL/NOIDA/2010 dated 14/05/2010 Passed by CC & CE (Appeals), Noida
5.	E/2598/2010	CCE, Noida	Mr. M.S. Karolia	-do-
6.	E/888/2011	CCE, Noida	M/s Indo Asian Fusegear Ltd.	O-I-A-1-2-CE/APPL/NOIDA/2011 dated 14/01/2011 Passed by CC & CE (Appeals), Noida
7.	E/889/2011	CCE, Noida	Mr. M.S. Karolia	-do-

Appearance:

Shri Rajeev Ranjan, Joint Commissioner, for Revenue
Shri Bipin Garg & Ms Stuti Saggi, Advocates, for Assessee

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 11/04/2018
Date of Pronouncement : /06/2018

FINAL ORDER NOs-**71162-71168 / 2018**

Per: Anil Choudhary

The above stated appeals though arising out of three impugned orders are having same issue involved and therefore, they are taken together for decision.

2. The brief facts of the case are that M/s Indo Asian Fusegear Ltd. (IAFL for short) were manufacturers of CFL lamps. At their Noida unit, they undertook manufacture of CFL lamps to some extent and remaining process of manufacture on the same goods were carried out at their Haridwar Unit. At Noida unit glass tubes were coated with the tri-band phosphorous filled with mixture of argon and mercury vapour. The glass tube was bent on both ends and also sealed. Inside the said glass tubes at their ends tungsten filament was connected to the lead in wire outside at both the ends. At that stage the partially processed goods were shifted or transferred to Haridwar unit on stock transfer basis. At Haridwar Unit, starter, capacitor and plastic cap with metal pins were being added in different combinations to different processed goods, cleared from the Noida Unit to make ready to use CFL. CFL is classifiable under Tariff Item No.85393110 and it attracts duty @ 8% ad valoram as per Sl. No.32 of Notification No.6/2006-CE dated 01.02.2006. The parts of CFL are classifiable under Tariff Heading No.85399010 and attract 16% Central Excise Duty ad valoram. Dispute arose between IAFL and Revenue as to the partially processed glass

tubes as discussed hereinabove whether they were classifiable as CFL under Tariff Item No.85393110 or classifiable as part of CFL under Tariff Item No.85399010. Revenue's contention was that the goods cleared from Noida unit were parts of CFL and classifiable under Tariff Item No.85399010. IAFL has contended that as provided under Rule 2 (a) of Rules of Interpretation of Tariff, the goods which were transferred to Haridwar unit from Noida unit were having essential character of a complete CFL, because if electricity was passed in the same there was the capacity of glowing and therefore, since the essential character of CFL is to glow the light and they were capable of doing so. The stage at which goods were transferred from Noida unit, the said goods were classifiable under Tariff Item No.85393110 which is entry for CFL. Rejecting the said contention of IAFL, revenue issued three show cause notices to IAFL. 1st show cause notice dated 14.12.2007 was issued covering a period from 01.03.2006 to 30.11.2007 demanding Central Excise duty of Rs.51,50,217/-. 2nd show cause notice was issued on 07.01.2009 for the period from 01.01.2007 to 30.09.2008 demanding Central Excise duty of Rs.8,51,920/- and the 3rd show cause notice was issued on 30.09.2010 covering a period from 01.10.2008 to 30.06.2009 demanding duty of Rs.1,80,618/-. The first show cause notice dated 14.12.2007 was adjudicated through the impugned Order-in-Original dated 08.12.2008 wherein demand was confirmed and personal penalty was imposed on Mr. M.S. Karolia. The Original Authority did not impose penalty for violation of Rule 10 of Central Excise Rules, 2002. Therefore, revenue preferred Appeal No.E/566/2009 for imposition of penalty for violation of Rule 10 of Central Excise Rules, 2002. The appellant-assessee also preferred Appeal Nos.E/856-857/2009 against confirmation of demand and imposition of penalty and imposition of personal penalty on Shri M.S. Karolia, before this Tribunal. In the subsequent show cause notice, original authority confirmed the demand through the Order-in-Original dated 22.12.2009 which was appealed against and said appeal was decided through the impugned Order-in-Appeal dated 14.05.2010, wherein the learned Commissioner (Appeals) has held that the stage at which processed goods were removed from Noida Unit, were properly classifiable under Tariff Item No.85393110. Aggrieved by the said order, revenue has preferred Appeal Nos.E/2597-2598/2010 before this Tribunal. Appeal Nos.E/888-889/2011 were preferred by Revenue against Impugned Order-in-Appeal dated 14.01.2011.

3. Heard both sides and perused the records.

4. After hearing both sides and on perusal of records, we find that Appeal No.E/2597/2010 was preferred by revenue, challenging the Order-in-Appeal dated 14.05.2010. We find that Learned Commissioner (Appeals) has taken into

consideration the various statements recorded of Shri Arunava Choudhary, Shri M.S. Karolia, Shri Satnam Singh and examined the said Rule 2 (a) of General Rules for Interpretation of the First Schedule to Central Excise Tariff Act, 1985 and relied on the ruling by Hon'ble Supreme Court in the case of M/s O.K. Play (India) Ltd. Vs CCE, Gurgaon reported at 2005 (180) ELT 300 (SC) and this Tribunal's final order in the case of Universal Commercial Corporation Vs Collector of Customs, Delhi reported at 1994 (69) ELT 150 and held to conclude that the goods which were cleared from Noida unit were classifiable under Tariff Item No.85393110. The relevant extract of said Order-in-Appeal dated 14.05.2010 is reproduced below for appreciation of the facts and law involved in the said appeal:-

> *"6.3 The instant appeals have been filed against the impugned order challenging that the 'based capsule' (impugned goods) are the complete CFLs and are classifiable under Tariff heading No.85393110 and that the benefit of concessional rate of duty as prescribed under Notification No.06/2006-CE dated 01.03.2006 is available in respect of the said goods. I find that the adjudicating authority relying on the statements of Sh. Arunava Choudhary, {G.M. Finance}. Sh. M.S. Karolia {G.M.} Sh. Satnam Singh, {Sr. Production Manger of M/s Halonix Lamps} and declaration filed with the Deputy Commissioner, Central Excise, Haridwar arrived at the conclusion that the based capsules are parts of CFL and therefore not eligible for concessional rate of duty under Notification No.06/2006. The relevant portion of*

statements relied upon by the adjudicating authority are as below-

= <u>Sh. Arunava Choudhary:-</u>

-as regards to the process undertaken on based capsules by their Haridwar unit after being cleared from Noida unit they add capacitor, starter, bottom of the based capsule in case of non-direct fit lamp or core lamp.

-based capsules are never sold in the market for consumption by ultimate consumer

-based capsules is CFL with plastic base attached since it is capable of giving light by using starter

= <u>Sh. M.S. Karolia:-</u>

-based capsule is a glass tube which has been bend and both ends of which has been sealed and inside there is tungsten filament connected to text in wire outside at both ends. The glass tube is coated with Tri-band phosphorous and mercury dropped inside.

-in case of direct fit lamp {CFL} we add ballast, plastic bottom and aluminium cap. In case of Core lamp (CFL) plastic bottoms with metal pins are added to the based capsules at their Haridwar unit.

-the based capsule as cleared from Noida unit, cannot be used by a customer.

-the based unit transferred to their Haridwar unit cannot provide light.

= <u>Sh. Satnam Singh:-</u>

-there are two types of CFL; one is Non Electofit (CFL without ballast) or the core lamp and the other is direct fit lamp (CFL with ballast).

-capsule is glass part of CFL with both ends sealed;

-in normal trade parlance based capsule is not known as CFL.

-for direct fit lamp other parts which are required to be fitted are PCB, capacitor, starter, plastic cap

= Declaration filed with the Deputy Commissioner, Central Excise, Haridwar –

It was noticed that copper strips, PBT, Filaments as major inputs which were declared to be used in the manufacturing of CFL/FLT.

6.4 The adjudicating authority further observed that the appellant's plea for classifying the goods in accordance with Rule 2(a) of the General Rules for interpretation to CETA, 1985 is not of any help to them, if it is treated as incomplete or unfinished goods having essential characteristics of finished item yet as per rule it is to be classified in the same heading i.e. 85399010 and that the Notification No.06.2006, at Sl. No. 32 grants exemption to Compact Fluorescent Lamp (CFL) falling under sub-heading 85393110 only and therefore, the exemption is not applicable to the goods manufactured by the appellant.

6.5 The appellant have placed reliance on Rule 2(a) of the General Rules for Interpretation of the First Schedule to the Central Excise Tariff Act, 1985. The said Rule reads as under-

"Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of the rule), presented unassembled or disassembled."

The said Rule has been clarified in the Explanatory Notes to the Harmonized System as-

Rule 2(a) (Incomplete or unfinished articles)

(1) The first part of Rule 2(a) extends the scope of any heading which refers to a particular article to cover

not only the complete article but also that article incomplete or unfinished, provided that, as presented, it has the essential character of the complete or finished article.

(2) The second part of Rule 2(a) provides that complete or finished article presented unassembled or disassembled are to be classified in the same heading as the assembled article.

The Hon'ble Supreme Court in the case of O.K. Play (India) Ltd. Vs. CCE, Gurgaon reported at 2005 (180) ELT 300 (S.C.) held that-

"(1) HSN along with explanatory notes provide as safe guide for interpretation of an entry.

(2) Equal importance to be given to Rules of Interpretation of Excise Tariff

(3) Functional utility, design, shape and predominant usage have also got to be taken into account while determining classification of an iterm".

During the personal hearing the representative of the appellants produced the impugned goods for inspection. I find that 'based capsule' as produced before me requires the plastic attachment with pins to make the same as finished. In view of the above referred Rule it is clear that the 'based capsule' in question will fall in the category of unfinished article having essential characters of CFL. In the based capsule for a finished Non Electofit CFL only the plastic base with pins is required to be fitted and whereas for Direct fit CFL other components such as ballast, capacitor, starter and plastic cap are required to be fitted. The 'based capsule' can by no means be called as part of CFL. In fact it is an unfinished article with essential characteristics of CFL. The test of marketability *as stressed by the adjudicating authority is not warranted in the present case. I place reliance on the following case laws.*

The Hon'ble CESTAT in the case of Bharat Enterprises vs. CCE, Delhi 2002 (139) ELT 321 (Tr.) held that the rough machined/job worked moulds not capable of being sold or purchased as moulds/dies are excisable in view of Rule 2(a) of the General Rules for Interpretation of the First Schedule to the Central Excise Tariff Act, 1985.

As regards the marketability of 'based capsule', the Hon'ble CESTAT in the case of Universal Commercial Corpn. Vs Collector of Customs, Delhi (supra) held that The disagreement is only about the interpretation whether the incomplete machine should be classified as a complete machine. The ld. Member (Judicial) has applied the test whether it performs the function of the complete machine. The learned SDR has contested this finding on the ground that the expression in Rule 2 (a) is "essential character" and not "essential function", and has placed considerable material in support of his contention. I agree with him that the word "essential character" occurring in Rule 2 (a) cannot be interpreted to mean "functional character". The view of the learned SDR is also supported by the General Comments in Section XVI of the Harmonized System cited by him. I agree that the imported goods therefore have the essential charater of an air-conditioning machine as understood in Rule 2 (a)".

As asserted by the adjudicating authority the impugned goods cannot fall under heading 85399010 as parts pf CFL. A ballast or capacitor or starter can be considered as parts of CFL but the 'based capsule' which is in form of unfinished item cannot be termed as part.

From the Rule 2(a) and the case laws cited/reproduced above there remain no ambiguity in the classification of impugned goods and accordingly, I find that the findings of the adjudicating authority are not in consonance with the Interpretative Rules and decisions of the superior appellate authorities and therefore,, the impugned order is not sustainable.

As the demand itself is held to be not sustainable the question of levy of interest or penalty on appellant-1 or appellant-2 does not arise.

In view of the above discussions and findings I set aside the impugned order and allow the appeals."

We find that the findings recorded by the learned Commissioner (Appeals) are sustainable in law. We, therefore, hold that the goods cleared by IAFL from Noida unit were appropriately classifiable under Tariff Item No.85393110.

5. We, therefore, allow the appeals filed by M/s Indo Asian Fusegear Ltd. and Mr. M.S. Karolia and we dismiss all the appeals filed by revenue. M/s Indo Asian Fusegear Ltd. and Mr. M.S. Karolia shall be entitled for consequential relief, as per law.

(Pronounced in Court on- /06/2018)

(Anil G. Shakkarwar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

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