CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20438 of 2018

(Arising out of Order-in-Appeal No. 1020/2017 dated 19.12.2017 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Bosch Ltd.,
(Earlier known as 'M/s. Bosch India Pvt. Ltd.,)
Post Box No. 3000,
Hosur Road, Adugodi,
Bangalore.

Appellant(s)

VERSUS

Commissioner of Customs,
BMTC Building,
Old Airport Road,
Domlur,
Bangalore 560 071.

Respondent(s)

APPEARANCE:

Ms. Shambavi Mishra with Ms. Ashwini Nag, Advocates for the Appellant

Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 20192 /2025

DATE OF HEARING: 18.02.2025
DATE OF DECISION: 18.02.2025

PER : DR. D.M. MISRA

This is an appeal filed against the Order-in-Appeal No.1020/2017 dated 19.12.2017 passed by the Commissioner of Customs(Appeals), Bangalore.

2. Briefly stated the facts of the case are that the appellant had imported 'Hot Film Air Mass Meters' (HFM) through Air Cargo Complex, Bangalore declaring it classification under CTI 9026 8090 claiming exemption from BCD under Sl.No.31 of Notification No.24/2005-Customs dated 01.03.2005 as amended, whereas the Department proposed to classify the product under CTH 9032 8990 denying the benefit of the said notification. A show-cause notice was issued on 02.11.2015 to change the classification and recovery of differential duty amounting to Rs.32,84,842/-along with interest and penalty. On adjudication, demand was confirmed with interest; penalty and fine were imposed. Aggrieved by the said order, they filed appeal before the learned Commissioner(Appeals), who in turn rejected their appeal. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant submits that the authorities below have not appreciated the fact that the product imported is only for the purpose of measuring the air mass flow and wrongly observed that the product is controlling or regulating the conditions of air pressure and heat etc. and directed the classification of the product under CTI 9032 8990.

4. Referring to the brochure submitted with the appeal paper book, she has submitted that the purpose of the impugned goods is only to measure air mass and not to control the flow of air. She submits that the issue has already been reached this Tribunal, in their own case. Taking note of the literature / brochure, this Tribunal decided the issue in favour of the appellant along with other products, reported as Bosch India Ltd. Vs. CC, Bangalore [2021(375) ELT 227 (Tri. Bang.)].

5. Learned AR for the Revenue reiterated the findings of the learned Commissioner(Appeals).

6. Heard both sides and perused the records.

7. The short issue involved in this case for consideration is classification of the product "Hot Film Air Mass Meter" under CTI 9026 8090 as claimed by the appellant or under CTI 9032 8990 as proposed by the Revenue. Even though the authorities below have held that the primary function of the product is controlling of air flow and the secondary function is measuring, on going through the brochure, we do not find any such facts indicating that the imported goods are designed to control the flow of the gas. The brochure enclosed at page 202 of the appeal paper book reads as follows:-

> ***Task***
> *The HFM directly measures the engine's air intake. This input variable is used to calculate the required amount of fuel injected and to control the exhaust-gas recirculation, if applicable. Future, even more rigid emission and fuel-consumption legislation will require further increased signal precision and diagnostic capabilities. Additional temperature, humidity and pressure sensors can also be integrated.*
>
> ***Function***
> *The HFM measures the air mass in the air intake tract. The sensor element consists of a heated sensor membrane over which the intake air flows. The temperature of two defined areas on the membrane is measured. The more air is flowing over the membrane, the higher the temperature difference between both measuring areas is rising.*

8. We find that this Tribunal addressing the issue on similar circumstances in the appellant's own case held as follows:-

> ***12.*** *The crux of the argument on the part of the appellants was that the different items manufactured by them like water signal/sensors, pressure sensors, [hot] film air mass meters/air mass sensors and temperature sensors are classified under Heading 9026 and not under [Heading] 9032 as contended by*

the Department because these are only measuring instruments and do not have any control on the operation of the main engines. Per contra, the Department submits that in view of the advertisement/catalogues available on the website of the appellants, the instruments are useful not only in measuring different parameters but play a pivotal role in controlling the engines themselves. We find that in terms of Chapter Note 7(a) to Chapter 90, instruments and apparatus which automatically control the variables of liquids or gases and which are designed to bring to maintain a desired value by constantly measuring. We also find that in terms of HSN Explanatory Notes to Chapter 90, explains that in order to fall under Chapter 9032, the impugned instrument should have three devices i.e., for measuring, comparing the measurement with the desired value and start or stop the engine to which they are attached. As per the submissions of the appellants, the instruments have mechanism to measure and to throw information or signal in comparison to the desired parameters. Learned Authorised Representative for the Revenue submits that as per the literature available on the website, the instruments have all the functions which are required to enable such instruments to be classified under Heading 9032. On going through the extracts of the websites submitted by the Learned Authorised Representative, the descriptions given for various items are as follows :

(i) Water sensors : They are described to be water sensor and accessories to diesel filters;
(ii) Hot film air mass meter : They are described to be helpful in determining the air mass reliability and accurately contribute to greater fuel combustion efficiency; adopting the air and fuel mass enables efficient fuel combustion;
(iii) Digital air mass measure : Low measuring tolerance and power consumption; high pulsation accuracy; rapid response behaviour enables stop/start;
(iv) Mass airflow meters : They ensure low levels of harmful emissions with greater fuel efficiency and improved engine performance.

13. *On going through the above literature, it is not categorically stated anywhere that the impugned instruments are capable of controlling the main machines; it is stated that the measurement is accurate and improves the engine performance. It is*

> *not coming forth from the literature that these are capable of triggering the stop or start of the engines. Thus, we find that the Revenue could not establish the controlling feature of the instruments. Therefore, we find that Revenue has not discharged its final responsibility to establish the correctness of the classification proposed by them. It was open to the Department to investigate the matter further to establish with cogent evidence to substantiate their contention. Revenue was within their rights to obtain any technical opinion to establish the classification of the instruments under Heading 9032 and to counter the claim of the appellants about the classification under Heading 9036. The same having not been done, we find that there is no evidence to contradict the claim of the appellants. Therefore, the appellants should be eligible to classify the goods under [Heading] 9026. We find that the appellants have rightly relied upon the cases cited above to drive home the point that the onus to disprove the classification claimed by the appellants is squarely under the Department.*

9. Following the aforesaid precedent, we do not see merit in the observation of the learned Commissioner(Appeals) and hence liable to be set aside. Consequently, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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