CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 2981 of 2011

[Arising out of Order-in-Appeal No. 95/2011 dated 19/09/2011 passed by the Commissioner of Customs (Appeals).]

M/s. BOSCH INDIA LTD 43, II STAGE, INDUSTRIAL SUBURB, YESHWANTHPUR ROAD, BANGALORE – 560 022. KARNATAKA	Appellant(s)

VERSUS

Commissioner of Customs C.R. BUILDING, QUEENS ROAD, P.B.NO. 5400, BANGALORE – 560 001. KARNATAKA	Respondent(s)

Appearance:

Mr. Ravi Raghavan & **Mr. Rohan, Advocate** LAKSHMI KUMARAN & SRIDHARAN WORLD TRADE CENTRE NO.404-406, 4TH FLOOR, SOUTH WING BRIGADE GATEWAY CAMPUS NO.26/1, DR. RAJKUMAR ROAD, BANGALORE - 560 055. KARNATAKA	For the Appellant
Mr. P. Gopakumar, **Joint Commissioner (AR)**	For the Respondent

Date of Hearing: 03/03/2020
Date of Decision: 02/07/2020

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20376 /2020

Per : P. ANJANI KUMAR

The Appellants M/s. Bosch India Ltd are engaged in the manufacture of automotive parts and components classifiable under Chapter 87 of the Central Excise Tariff Act, 1985 and import various Sensors for use in the automobile; the Appellants vide Bill of Entry No. 245467 dated 19.10.2009 imported 'Water Signal' classifying under Tariff Item 9026 80 90 of the Customs Tariff Act, 1975 claiming 'Nil' rate of duty; during the period from June 2009 to September 2009, the Appellants imported several Sensors such as pressure sensors, pressure regulators, temperature sensor etc. classifying the same under Tariff Item 9026 80 90. Revenue proposed to re-classify the sensors imported by the Appellants under Tariff Item 9032 89 90 of the Customs Tariff instead of Tariff Item 9026 80 90 as adopted by the Appellants on the ground that per Explanatory Notes to Chapter Heading 9026, only instruments made to measure or give a direct reading of the matter being measured or checked are classifiable under Chapter Heading 9026; the water signal imported does not measure or check the quantity of water or does not read or give an output showing the quantity measured/checked and therefore the classification of these items under Tariff Item 9026 80 90 is incorrect; the 'Water Signal/ Sensors' monitors and regulates the level of water in the fuel feed system of endothermic engine and gives an indication when the level of the water reaches the pre-determined level; that with these functions, the water signal/ sensor are covered under Chapter Note 7(a) of Chapter 90 and is accordingly liable for classification under Tariff Item 9032 89 90 of the Customs Tariff, A Show Cause Notice dated 09.12.2009was issued to the appellants; the same was adjudicated by OIO No.257/2010 dated 15.06.2010 wherein duty of Rs.36,45,349 was confirmed along with interest. An appeal filed by the appellants was disallowed by Commissioner Appeals vide order No.95/2011 dated 16.09.2011. Hence, the appellants preferred this appeal No. C/2981/2011.

2. Learned counsel for the appellants submits that Imported goods are classifiable under Tariff Item 9026 80 90 and not under Tariff Item 9032 89 90 of the Customs Tariff; Water Signal / Sensor is a water in fuel sensor that monitors and detects the presence of water in the fuel feed system of endothermic engines and is particularly suitable for diesel engines; the fuel flows through the Fuel Filter from the Tank; in the Fuel Filter the water gets separated from diesel and gets collected at the bottom of the Filter; at the bottom of the Fuel Filter assembly, Water Sensor or the Water sensing measuring device is assembled; this device measures the water level in the Decanter chamber; this device is connected to the lamp/ LED in the dash board of the Vehicle; when the water level in the decanter chamber of the Filter reaches the pre-determined safe level, the lamp/ LED glows, thus indicating the end user (i.e. Driver) to drain the water by unscrewing the device; he submitted suppliers catalogue.

3. Learned counsel for the appellants further submits that Tariff Item 9032 89 90 of the Customs Tariff; Chapter Heading 9032 of the Customs Tariff Act only deals with automatic regulating or controlling instruments and apparatus; in terms of the above Chapter Note 7(a) to Chapter 90, instruments and apparatus which automatically controls the variables of liquids or gases and which are designed to bring this factor to and maintain it at a desired value by constantly or periodically measuring the actual value are classifiable under Chapter Heading 9032; in terms of the HSN Explanatory Notes to Chapter 90.32 at Pages XVIII-9032-1 to XVIII-9032-3, for an instrument to be classified under Chapter Heading 9032, the same should be a single entity or single functional unit consisting of three devices namely i.e. a device for measuring the variable, Comparing the measured value with the desired value and actuates the third device and the starting, stopping or operating device which brings or maintains the measured value at the desired value; thus, the instrument or apparatus to be classifiable under Chapter Heading 9032 should be capable of automatically measuring the variable, comparing the measured value with a desired value and actuating a regulating device to bring or maintain the measured value at the desired value; if an instrument or apparatus does not fulfill any of the above the condition, it shall not be classifiable under Chapter Heading 9032; tribunal in the case of Siemens Ltd Vs CCE, Nashik 2014-TIOL-157-CESTAT-MUM**,** held that an item to be classified under Chapter Heading 9032 should be capable of continuously monitoring various parameters such as pressure, flow and temperature level etc. and in addition should also be capable of comparing parameters of the desired value with the actual value and the machine should be capable of bringing the variables to the desired value.

3.1. He further submits that Water Signal is connected/screwed to the bottom of the Fuel Filter which permits the drainage of any water in the fuel into the Decanter chamber; the Water Sensor measures the water level in the Decanter chamber and when the water level in the decanter chamber of the Filter reaches the pre-determined safe level, the Water Sensor causes the lamp/ LED on the dashboard of the vehicle to glow, thus indicating the end user (i.e. Driver) to drain the water by unscrewing the device; thus, the functioning of the Water Signal is two-fold, namely measuring the water level in the decanter chamber connected to the Fuel Filter and a control device which compares the measured value of against the pre-determined safe value or the desired value and indicates the result of such comparison by causing the lamp/ LED to glow; the control device of the Water Signal does not actuate a starting, stopping or operating device which brings or maintains the measured value of the water in the Decanter chamber to/at the desired value; instead, the end user of the vehicle has to manually unscrew the Water Signal to drain the water in the Decanter chamber and to bring it to the desired value/ level; in the present case, the regulation or control of the water level of the Decanter chamber of the fuel filter does not take place automatically; further, the Water Signal consist of a measuring device and a controlling device which compares the measured value with the desired value only, and does not consist of a starting, stopping or operating device which brings or maintains the measured value of the water in the Decanter chamber to/ at the desired value; therefore, the Water Signal is not classifiable as an 'Automatic regulating or controlling instrument or apparatus' under Chapter Heading 9032 of the Customs Tariff.

4. Learned counsel for the appellants submits that Water Signal/ Sensor is classifiable under Tariff Item 9026 80 90 of the Customs Tariff; the Appellants submit that the instruments or apparatus which measures or checks the flow, level, pressure or other variables of liquids or gases are classifiable under Chapter Heading 9026 of the Customs Tariff; Therefore, the Water Signal is a level indicator for liquids and is therefore a measuring or checking instrument or apparatus classifiable under Chapter Heading 9026 of the Customs Tariff. He submits that the Australian Customs and Border Protection Service pursuant to the Tariff Advice Application filed by M/s. Robert Bosch (Australia) Proprietary Limited, has examined the classification of Water Signal vide Tariff Advice dated 12.10.2011 and observed that the Water Sensor is not classifiable under Chapter Heading 9032 and is classifiable under Chapter Heading 9026 as the same is a device which detects a variable quantity and converts it into a signal; he further relies on the BTI Reference GB115057011 of the European Commission Taxation and Customs Union classifying the Water Sensors under Chapter Heading 9026.

4.2. He submits that Tribunal in the case of Commissioner of Customs, Bangalore Vs SPM India Limited reported in 2007 (211) ELT 573 (Tri – Bang), wherein the issue of classification of 'Air Leak Tester', a high precision measuring and checking instrument incorporating different pressure sensor determining the existence of leakage of air / gas based on measurement of pressure, was discussed, Tribunal held that Air Leak Tester is a high precision measuring and checking instruments incorporating different pressure sensor which measures and checks the volume or pressure of air/gas and determines the existence of leakage of air/gas and the rate of leak; the leakage is determined only based on measurement of pressure and the imported item can definitely be classified an instrument for measuring or checking pressure under Chapter Heading 9026.

5. Learned counsel for the appellants aver that

- Pressure Sensors measure the pressure of the aspired air in the intake manifold in the case of pressure-controlled injection systems for gasoline and diesel engines and to measure the absolute pressure and temperature in the fuel rail pipe of natural gas systems that are operated with CNG; it is not a regulating or controlling device.
- Hot-film Air Mass Meters/ Air Mass Sensors measure the mass air flow aspired by the engine independently of the temperature and density of the air and does not regulate or control device.
- temperature sensor TF-W (for Water/Oil/Fuel) measures temperatures at or in the engine, e.g. in the coolant circuit, the oil circuit or in the fuel supply line; it is a device used to measure or check the variable namely, temperature and is not a regulating or controlling device;
- Therefore, the above said goods are classifiable under Chapter Heading 9026 of the Customs Tariff Act and not under Chapter Heading 9032.

6. Learned counsel for the appellants aver that Revenue has not discharged the burden of proving that the imported goods are classifiable under Chapter Heading 9032; they have all along classified the Sensors under Tariff Item 9026 80 90 and the Department has been assessing the goods under the classification as claimed by the Appellants, without raising any objection whatsoever at the time of clearance of the goods; when an importer claims a classification under a particular heading/sub-heading, the onus will always be on the Department, if it proposes to change the classification for any reason as held in

- *Hindustan Ferrodo Ltd Vs CC Bombay, 1997 (89) ELT 16 (SC).*
- *Singhla Sales Corporation Pvt Ltd Vs CC Amritsar - 2002 (141) ELT 806 (Tri-Del)*
- *M.P. Dyechem Industries Vs CCE, Bhopal - 2002 (139) ELT 656 (Tri.-Del)*

7. Learned counsel for the appellants submits that Demand is not sustainable as the assessment in Bill of Entry not challenged; the impugned Order seeks to re-determine the classification of the imported goods and has confirmed the demand of differential customs duty along with interest in respect of the imports made during the above period under dispute; the Appellants have classified the imported goods under Tariff Item 9026 80 90 of the Customs Tariff; goods imported under each Bill of Entry were examined by the officers of the Customs Department, at the time of import . and accepted; thereafter, the same were cleared by the Appellants; therefore, no demand under Section 28 can be raised as the bills of entry were not challenged. He further submits that demand of interest under Section 28AA is not sustainable as the recovery of duty itself is not sustainable on the grounds as mentioned above as held in Pratibha Processors v. Union of India, 1996 (88) ELT 12 (SC).

8. Learned Authorised Representative for the Department reiterates the findings of Order-in-Original and Order-in-Appeal. He submits that basic findings are that the items imported are not just instruments and operators for measuring parameters like temperature, pressure, water level, etc., but these are apparatus used in the automatic controlling and regulating system in automobile to help optimize and improve the efficiency of the engines. He further submits that there is direct evidence in this regard from the product literature available on Bosch website; it is evident that all these instruments are used to measure the parameters with high accuracy through digital means and to further contribute in controlling the output and in improving the efficiency by triggering the required parameters.

9. Heard both sides and perused the records of the case. Appellants claim that water signal/sensor is a water in fuel sensor that monitors and detects the presence of water in the fuel feed system; Chapter Heading 9032 deals with automatic regulating and controlling instruments in terms of Chapter Note 7A to Chapter 90 instruments and apparatus which automatically control the variables of liquids or gases and which are designed to bring the factor to and maintain it at a desired value by constantly or periodically measuring the actual value are classifiable under Chapter Heading 9032. They also submit that in terms of HSN Explanatory Notes Chapter 90.32, an instrument shall be classified under 90.32 only if it has three devices for measuring the variable, comparing the measured value with desired value and for stopping or starting the operating device. The appellants also rely upon the classification of auto signal given by the Australian Protection and Border Security Force and BTI reference GB 11507011 of the European Commission for Taxation and Customs Union. They also rely on the decision of the Tribunal in the case of Siemens Ltd. (supra) and SPM India Ltd. (supra).

10. To have a proper appreciation of the facts of the case, it will be useful to have a look at the rival classification. We find that rival contentions 9026 and 9032 appear in the Tariff as follows:

9026

9026	Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow

	meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading 9014, 9015, 9028 or 9032
9026 10	For measuring or checking the flow or level of liquids
9026 10 10	Flower meters
9026 10 20	Level gauges
9026 10 90	Other
9026 20 00	For measuring or checking pressure
9026 80	Other instruments or apparatus
9026 80 10	Heat meters
9026 80 90	Others
9026 90 00	Parts and accessories

9032

9032	Automatic regulating or controlling instruments and apparatus
9032 10	Thermostats:
9032 10 10	For refrigerating and air-conditioning appliance and machinery
9032 10 90	Others
9032 20	Manostats:
9032 20 10	For refrigerating and air-conditioning appliances and machinery
9032 20 90	Others Other instruments and apparatus
9032 81 00	Hydraulic or pneumatic
9032 89	Other:
9032 89 10	Electronic automatic regulators
9032 89 90	Other
9032 90 00	Parts and accessories

11. Note 7 of HSN Explanatory Notes Chapter 90 reads as follows:

(a) *Instruments and apparats for automatically controlling the flow, level, pressure or other variables of liquids or gases or for automatically controlling temperature, whether or not their operation depends on an electrical phenomenon which varies according to the factor to be automatically controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value; and*

(b) *Automatic regulators of electrical quantities, and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be controlled, which are designed to being this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value.*

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, heart film air mass meters / air mass sensors and temperature sensors are classified under Heading 9026 and not under 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 behavior 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 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.

14. The learned counsel for the appellant also submits that the Department has not challenged the assessment in individual Bills of Entry and therefore, a demand issued under Section 28 of the Customs Act, 1962 is not tenable. Appellants have also relied upon **SPM India Ltd.** (supra) wherein 'air leak tester' was classifiable under Heading 9026. However, we find that the facts of the case are different inasmuch as the classifications claimed by the rival parties therein are different. However, as per our discussion above, we find that as it is not evidenced that the instruments do not have any mechanism to control or trigger, start or stop of the engine, in view of the HSN Explanatory Notes, they cannot be classified under 9032. Therefore, we do not find any reason to interfere with the classifications claimed by the appellants. In view of the above, we find that the appeal succeeds.

15. In the result, we allow the appeal with consequential relief, if any, as per law.

(Order was pronounced in Open Court on **02/07/2020**.)

(P. K. CHOUDHARY)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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