IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 30.1.2017
Date of Pronouncement: 23.2.2017

Appeal No. C/53675/2015-CU.(DB) with C/CO/50114/2016

(Arising out of Order-in-Appeal No. CC(A)Cus/D-I/I&G/945/2015 dated 17.7.2015 passed by the Commissioner of Customs (Appeals), New Delhi)

CC, New Delhi — Appellant

Vs.

M/s Pranav Enterprises — Respondent

Appearance

Shri K. Poddar, D.R. - for the appellant

Shri R.K. Phillips, Advocate - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 51912/2017

Per Ashok K. Arya :

1. Revenue (Commissioner of Customs, Delhi) is in appeal against the Order-in-Appeal No. 945/2015 dated 17.7.2015 passed by Commissioner of Customs (Appeals), Delhi.

1.1 The Order-in-Appeal dated 17.7.2015 holds classification of subject goods viz. Fibre Optic Ferrule ("FOF") under Chapter Heading 85389000, whereas the Order-in-Original No. 28/2014 dated 25.7.2014, passed by Deputy Commissioner of Customs decided classification of the subject goods in question under Customs Tariff Heading 69149000.

2. Revenue has been represented by ld. D.R., Shri K. Poddar and respondent viz. M/s Pranav Enterprises have been represented by ld. Advocate, Shri R.K. Phillips.

3. The brief facts are that the respondent M/s Pranav Enterprises imported subject goods viz. Fiber Optic Ferrule under CTH 85381090 which pertains to parts suitable for solely or principally with the apparatus of heading 8535, 8536 or 8537 – others. Since the description of goods was not clear for classification purpose, the consignment was subjected to 100% first examination.

3.1 The Deputy Commissioner of Customs vide Order-in-Original No. 28/2010 dated 25.7.2004 rejected the claimed classification under Tariff Item 85381090 and held as under:

> "As such the appropriate applicable sub heading for the ceramic ferule imported as 'Fiber Optic Ferrule' is 6914.90 of the harmonised Customs Tariff of India, and Tariff Item 69149000 which provides for 'other ceramic articles 'other'.

3.2 The respondent, M/s Pranav Enterprises went in appeal before Commissioner (Appeals), who held that more appropriate classification for the subject goods is Customs Tariff Heading 85389000. The Commissioner of Customs in the Order- in-Appeal dated 17.7.2015 held as under :

> '11. Chapter Heading 69.14 deals with 'other ceramic articles' whereas Chapter Heading 8538 deals 'parts suitable for use solely or principally with the apparatus of headings 8535, 8536 or 8537.' The apparatus of headings 8535, 8536 and 8537 basically deals with electrical apparatuses for switching or protecting electrical circuits; or for making connections to or in electrical circuits; connectors for optical fibers, optical fiber bundles or cables; boards, panels, consoles, desks, cabinets etc.
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> 12. As evident, notwithstanding the issue of composition, the said product is sold in the market not for its composition but for its use and application in the electrical items and apparatuses. Hence, in such a situation, the said product is not a general purpose product even otherwise. Hence the said product indisputably and indubitably falls Chapter Heading 8538 which covers the said product more appropriately and aptly and consequently under CTH 8538 90 00 for the aforesaid reasons."

4. The ld. AR reiterates the findings given in the Order-in-Original dated 25.7.2014 passed by Deputy Commissioner of Customs. Further, the ld. AR, Shri K. Poddar, based on the appeal memorandum, inter alia, submits as under :

(i) In the instant case, the ferrule is made of metal and zirconia which is a ceramic material. As such, the subject article is a composite article that prima facie appears to be classifiable under more than one heading – viz. one the heading appropriate to ceramic and the other which would account for article of the constituent material other than ceramic. Classification will accordingly be determined on the basis of that portion of the article which imparts the essential character or on the basis of the fact that each is equally specific. In the latter case, the heading which occurs last in numerical order among those which equally apply will merit consideration. As seen, the product at issue consists of ceramic (zirconia oxide) ferrules is to properly align and securely connect, thus as an independent article it squarely meets the dictionary meaning of 'ferrule'. In this regard, it has been found that for this composite article, zirconia oxide imparts the essential character of the product at issue with respect to both value and function..

5. On the other hand, ld. Advocate, based on the appeal memorandum, *inter alia* pleads as under :

(i) In order to manufacture Fiber Optic Connector the respondent imported Zirconia Ferrules with flange and sought the exemption from payment of whole of duty of Customs in terms of Notification No. 25/99-Cus. dated 28.2.1999 vide S. No. 112, when imported for use in manufacture of specified final products in India. The relevant entry of same is reproduced below:

S.No.	Chapter of Heading or Sub-	Description of Imported	Description of Finished

	heading or Tariff Item	goods	goods
112	39,72,74,76,85	Parts of Relays, Switches, Connectors	Relays; Switches; connectors

It is an admitted fact that the part of connectors were wrongly classified under TSH No. 85381090 instead of TSH No. 85389000 of CTA/CETA/

(ii) The Customs Authorities (Dy. Commissioner) sought to revoke the classification of Zirconia Ferrules specifically designed for Fiber Optic Connectors from Tariff Heading No. 85.38 to Heading 69.14.

(iii) As contended by Revenue that since the main constituent of Zirconia Ferrules is made of Ceramic, it has to be classified as article of Ceramic of Chapter 69. In this regard the respondent submits that the controversy over the classification of the product - whether the composition of the product or its use and application is decisive factor remains no longer res intregra in the light of decision of Hon'ble Apex Court in the matter of:

(i) *CCE Vs. Polyflex (Pvt.) Ltd.* – 1997 (94) ELT A249(SC).

(ii) *Atul Glass Industries Ltd. Vs. CCE* -1996 (26) ELT 473 (SC)

wherein it is ruled:

"It is a matter of common experience that the identity of an article is associated with its primary function. It is only logical that it should be so. When a consumer buys an article, he buys it because it performs a specific function for him. There is a mental association in the mind of the consumer between the article and the need it supplies in his life. It is the functional character of the article which identifies it in his mind."

(iv) The identity of the article is associated with its primary function, which in the present case is essential part of Fiber Optic Connectors of heading No. 85367000.

(v) The identity of the article is associated with its primary function, which in the present case is essential part of Fiber Optic Connectors of heading No. 85367000 classifiable under 85389000 irrespective of the material used.

6. We have carefully considered the facts of the case and submissions of both sides along with case laws cited. The rival classifications for subject item namely FOF (Fibre Optic Ferrule) given by the Revenue and the importer – respondent namely M/s Pranav Enterprises are 69149000 and 85389000. The Deputy Commissioner in the order in original holds the classification under Tariff Heading 69149000, whereas Commissioner (Appeals) holds classification under Tariff Heading 85389000. The respondent-assessee is arguing that appropriate classification for the goods in question is 85389000, which is the order of the Commissioner (Appeals) whereas Revenue is pleading that subject impugned goods deserve classification under Customs Tariff Heading 69149000.

6.1 Chapter 69 of the Customs Tariff covers ceramic products and Chapter Heading 6914 covers other ceramic articles where the description(s) given are as under:

Chapter 69
Ceramic Products

Tariff item	Description of goods	Unit	Rate of duty Standard	Preferential Areas
6914	Other ceramic articles			
6914 10 00	Of porcelain or china	kg.	10%	
6914 90 00	Other	kg.	10%	

6.2 Chapter 85 of the Customs Tariff mainly covers the following:

> **"Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles."**

The description(s) given for the Chapter Heading 8538 (and its sub-headings) of Customs Tariff are given below :

> **85.38 - Parts suitable for use solely or principally with the apparatus of headings 8535, 8536 or 8537.**
>
> **85.38.10 - Boards, panels, consoles, desks, cabinets and other bases for the goods of heading 8537, not equipped with their apparatus.**
>
> **8538 10 10 - For industrial use**
>
> **8538 10 90 - Other**
>
> **8538 90 00 - Other**

6.3 Revenue's main arguments against classification under 85389000 are that the goods in question made up of Zirconia (ceramic) and is an independent article; and this composition of Zirconia give it the essential character, therefore, it should go under

Chapter Heading 6914 of ceramic article and not as a Part of Fiber Optic Connector to be classified under Chapter Heading 85389.. On the other hand, the respondent-assessee is arguing that the imported goods are an essential Part of Fiber Optic Connectors of Heading No. 85367000; therefore, are to be classified under Chapter Heading 85389000 irrespective of the material used.

7. There is no dispute that the goods imported are Zirconia Ferrules named as Fiber Optic Ferrule (FOF) and they are important part of Fiber Optic Connectors of Customs Tariff Heading 8536. The Revenue wants to classify the item under Chapter 6914 because of its constitution as it is made up of ceramics (zirconia oxide); but because of the reason that the identity of the article is associated with its primary function, when it is essential part of fiber optic connector of 8536; the item is to be classified under Chapter Heading 85389000.

7.1. Revenue's argument is that General Content of the Section in HSN notes of Section XVI in para (B)(d) says that certain ceramic goods of Chapter 69 are excluded from Section XVI which consists of Chapter Headings 84 and 85 of Customs Tariff. But it further puts a rider saying - 'see General Explanatory Notes to Chapter 84 and 85'. However, when we refer to General Explanatory Notes to Chapter 85, we do not find any exclusion in case of the item in question which is Zirconia Ferrule (declared in the Bill of Entry) as Fiber Optic Ferrule (FOF). Therefore, when there is no specific exclusion for the item in question even when they are made up of ceramic, and when the item is specific part of Fiber Optic Connectors of Tariff Heading 85367000, there it deserves classification as part suitable for use principally with the apparatus, of heading under Chapter 8536 and would have classification under Heading 8538. Thus, we hold that the item viz. Fiber Optic Ferrule imported by the respondent deserves to be classified under Chapter Heading 8538 being part of Optical Fiber Connector of (sub heading 85367000 of Customs Tariff).

8. In the light of the above discussions, the subject item is to be classified under Customs Tariff Heading 8538. Consequently, the impugned order sustains along with the reasons mentioned therein.

9. in the result, appeal filed by the Revenue is dismissed, and cross-objections also disposed of.

(Pronounced in Court on 23.2.2017)

(Justice Dr. Satish Chandra)
President

(Ashok K. Arya)
Member (Technical)

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