**Telco Ltd. Vs. Collector of Customs**

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**SooperKanoon Citation** : sooperkanoon.com/11461

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jul-02-1997

**Reported in** : (1997)(94)ELT366TriDel

**Appellant** : Telco Ltd.

**Respondent** : Collector of Customs

**Judgement** :

1. Since the issue is common in these two appeals, these are being taken up together for disposal in the single order.

2. The appellants imported oil seals and sought classification under heading 8485.90. They were, however, assessed under sub-heading 4016.93. The importers then filed a refund claim reiterating their plea for classification under 8485.90. The Assistant Collector rejected the refund claim stating that applying Rule 3(a) of the Rules for interpretation, heading 4016.93 provides the most specific description of the goods and that the classification suggested by the importer was not acceptable. The Collector (Appeals) up-held this classification, resulting in the present appeal being filed before us.

4. In the memorandum of appeal, the claim made is that these goods are of specific shape and size designed for fitment into excavators. It was claimed that these were composite articles made of rubber and steel and, therefore, the classification under heading 8485.90 was correct.

The Revenue in their memo of cross-objection, claimed that no literature was furnished by the importers to show that they were parts of excavators. Therefore, the reference made to seals under Chapter 40 would be the guide for determining the classification.

5. Shri S.N. Ojha, ld. D.R. while reiterating the contentions made in the memo of Cross-objections, referred to the judgment in the case of the same appellants reported in 1991 (55) E.L.T. 563 (Tribunal) in which it was held that oil seals imported for fitment into motor vehicles would merit classification under Heading 87.08 as parts of motor vehicles but suggested that the contested goods were predominantly made of rubber and, therefore, the specific description of seals as given in Chapter 40 would be attracted.

6. We have carefully considered the pleas made in the appeal memo, the memo of Cross-objections and those made by the ld. D.R.7. In the memo of Cross-objection, it has been accepted that impugned goods were of specific shape and size and were manufactured for a specific use. We find that this very aspect was covered in the order of Tribunal cited by the ld. D.R. In the cited case, the Tribunal observed that the oil seals imported were used in the assembling of motor vehicles and that they were specially designed to be fitted into motor vehicles. The Tribunal, after examining the various notes, which give guidance to classification of goods under Chapters XIV, XVI and XVII classified them as parts of motor vehicles. We find that in the light of submissions made and the acceptance by the department, that these are parts solely used in excavators, the ratio of decided judgment would apply. Since the excavators, at the material time, fell under Heading 84.30, the contested goods would fall under Heading 84.31.

However, we take note of the submissions made by the ld. D.R. at this stage that the proceedings do not show whether the oil seals were not interchangeable with any other machinery. To determine this single point, we set aside the lower order and remand the proceedings back to the Assistant Collector who will redetermine the classification after examining whether the oil seals imported were interchangeable with any other machine.