

Collector of Central Excise Vs. K.K. Rubber Co. (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-21-1998

Reported in : (1998)(103)ELT652TriDel

Appellant : Collector of Central Excise

Respondent : K.K. Rubber Co. (P) Ltd.

Judgement :

1. In this appeal filed by the Revenue, the matter relates to the dutiability of the rubberised cotton fabrics known as friction cloth.

It was alleged in the show cause notice dated 9-2-1989 that the friction cloth was classifiable under T.I. No. 19(1)(b) of the erstwhile Central Excise Tariff; the respondents had captively used the said friction cloth in the manufacture of transmission belting (rubber products). The matter was adjudicated by the Addl. Collector, Central Excise, Delhi who observed that before the commodity was liable to central excise duty, its marketability had to be established and that the unvulcanised rubberised cotton fabrics were not marketable but these were used in the continuous and uninterrupted process of manufacture of transmission rubber belting. As the friction cloth was considered to be intermediate product without any marketability, the demand of duty made in the show cause notice dated 9-2-1989 was dropped.

2. We have heard Shri Satnam Singh, SDR for the appellant Revenue and Shri Naveen Mullick, Advocate for the respondents M/s. K.K. Rubber Co.

(P)Ltd. 3. Shri Naveen Mullick, Advocate submitted that the demand had been made invoking the extended period of limitation while there was no allegation of suppression in the show cause notice. He referred to the cross-objections filed by the respondents. He also submitted that the matter was covered by Punjab and Haryana High Court in the case of Punjab Rubber and Allied Industries v. UOI - 1984 (16) E.L.T. 57 (P & H).

4. We have carefully considered the matter. The adjudicating authority had observed that the friction cloth was used in a continuous uninterrupted process in the manufacture of transmission belting, and the friction cloth at the intermediate stage in the process of manufacture of the transmission belting, was not marketable.

5. We find that the matter is covered by the Punjab and Haryana High Court decision in the case of Punjab Rubber & Allied Industries v. UOI (supra). The Hon'ble High Court had observed that the friction cloth was only an intermediate product captively used for the manufacture of belting and conveyor belts and that irrespective of amendment in Rules 9 and 49 of the Central Excise Rules, 1944, the friction cloth was not liable to central excise duty.

6. In the light of the factual averments made in the adjudication order and the law as enunciated by the Hon'ble High Court of Punjab & Haryana, we do not find any infirmity in the view taken by the learned Addl. Collector Central Excise in the present proceedings. We do not find any merit in this appeal filed by the Revenue and the same is rejected. The cross-objections filed by the Respondents are also disposed of in the above terms.

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