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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-12-1998

Reported in : (1998)(103)ELT62TriDel

Appellant : Prag Industries

Respondent : Collector of Central Excise

Judgement :

1. In this Appeal the only question raised is whether the goods manufactured by the Appellants are classifiable under Chapter Heading 4016.19 as claimed by the Appellants and approved by the first Adjudicating Authority or they are classifiable under Chapter Heading 8607.00 as claimed by the Department and agreed to by the Collector (Appeals).

2. Appearing for the Appellants, ld. Counsel, Shri T.K. Srivastava, stated that the appellants are engaged in the manufacture of excisable goods viz, vulcanized rubber products other than hard rubber particularly of rubber and rubber to metal bonded items used as a part of Railways. Initially, appellants classified the items under Heading 4016.19 (vulcanised rubber products other than hard rubber) in their classification list submitted on 13-5-1989 which was changed to 8607.00 (Parts of Railways or Tramways Locomotive Rolling Stock) at the instance of Range Supdt. They, however, revised the classification to 4016.19 with effect from 1-4-1992 on which a SCN was issued on 11-5-1992 which was adjudicated in favour of the appellants by the Assistant Collector but was reversed by Collector (Appeals) in the impugned order before us.

3. Arguing the case of the appellants M/s. Prag Industries, Shri T.K Srivastava, ld. Counsel submitted that the appellants were manufacturers of vulcanised rubber products other than hard rubber particularly of rubber and rubber to metal bonded items used by Railways. The Assistant Collector in the adjudication order after considering the submissions made before him had held that in terms of the certificate issued by the Director General of RDSO, parts were made of rubber or rubber bonded steel which are used as rubber springs of vulcanised rubber. He also observed that by virtue of the exclusion clause in Section Note 2(a) of Section XVII of the Central Excise Tariff Act the expression "parts and parts and accessories" do not apply to the articles of vulcanised rubber other than hard rubber, whether or not they were identifiable as goods coming under Section XVII. Similarly, mechanical or electrical appliances or parts thereof under Section XVI (including electrical goods of all kinds) of hard rubber are excluded from the purview of Chapter 40 by Chapter Note 2(d). Therefore, articles of vulcanised rubber other than hard rubber are fully covered under Heading No. 4016.19. The Assistant Collector had, therefore, held that the goods under dispute would not be covered under Chapter Heading No. 86.07 and would be more appropriately classifiable under Heading 4016.19.

4. Defending the impugned order Shri RS. Sangia, ld. JDR submitted that in the instant case the goods are clearly identifiable as parts of railway or tramway locomotives falling under Chapter 86.07. He referred to the Explanatory Notes to HSN under Section XVII under which the headings apply to such parts or accessories which comply with three conditions, namely, (i) they are not excluded in terms of Section Note (2), they are suitable for use solely or particularly with articles of Chapter 86 to 88 and (iii) they are not specifically included elsewhere in the nomenclature.

5. We have considered the submissions and have gone through the grounds of appeals and the cross objections and the classification list filed by the appellants. We find that the Collector (Appeals) has examined the explanatory notes to HSN under section XVII which have been referred to in the cross objection filed by the department. The Collector (Appeals) had observed that the impugned goods, namely, goods described at Item Nos. 1 to 12 of Part 1 of the Classification List did

not satisfy the conditions referred to in the Explanatory Note under Sections XVII in the HSN. Further, the appellants had been manufacturing the said product made of rubber and steel and these items were identifiable as parts of Railway or Tramway locomotive or rolling stock which have been covered under Chapter Heading 87.07 for a long time. These items have a distinctive name, character and usage. They were also known under the said Trade Name and the gods having admittedly been used exclusively as parts of goods having specific entry under Chapter Heading No. 86.07. In view of these facts Collector (Appeals) had reversed the order of the Assistant Collector classifying the goods under 4016.19.

6. We find that it is no doubt true that under Interpretation Rule 3(a) a heading containing specific description has to be preferred to headings providing a more general description. In the instant case we find that grooved rubber has been held to be classifiable under Chapter Heading 4016.19 [1992 (57) E.L.T. T4]. Another item, Rubber Rolls is specifically mentioned under Heading 40.16 as residuary articles of vulcanised rubber. Still another item, vulcanied (other than hardened) non-cellular rubber profiles with metal inserts have been held classifiable under Heading 4008.29 [1989 (39) E.L.T. T5]. Similarly, rubber piping and tubing have been correctly classified under 4009.92.

Machine hose assembly of vulcanised unhar-dened rubber is again classifiable under 4009.92 [1989 (39) E.L.T. 681) (T)]. Again, oil seals have been held to be correctly classifiable under 40.16 [1989 (41) E.L.T. T51]. In support of the said classifications appellants have also relied on the various Trade Circulars issued by the C.B.E.C.as well as various decisions of the Tribunal. We find that the these material lend support to their contentions. They had also submitted that it is the predominent or essential character of the goods which would be decisive for deciding classification. We also find force in the appellants' further contention that for bringing goods within the Chapter Heading 86.07 as parts of railway or tramway locomotive or rolling stock it is necessary to see that the goods are akin to items covered by Chapter Note 2 of Chapter 86.Anand Motors Ltd. v. CCE, 1993 (68) E.L.T. 845 (T), in which the Tribunal had held that Section Note 2(a) to Section XVII clearly mentions that other articles of vulcanised rubber other than hard rubber (Heading No.40.16) do not come within the expression of "parts" and "parts and accessories". In that case the chemical examiner's report had stated that the goods were vulcanised rubber other than hard rubber.

8. Taking all the relevant factors into consideration and having regard to the above discussions we agree with the submissions made on behalf of the present appellants that the impugned goods would more appropriately be classifiable under Chapter Heading 4016.19 as held by the Assistant Collector and not under 8607.00 as held by the Collector (Appeals).