

**injecto Ltd. Vs. Cce**

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

**Decided On :** Mar-16-1999

**Reported in :** (1999)(83)LC170Tri(Delhi)

**Judge :** J Balasundaram, R T Lajja

**Appellant :** injecto Ltd.

**Respondent :** Cce

**Judgement :**

1. In this appeal filed by M/s. Injecto Ltd., the matter relates to the classification of the Fuel Oil Hose Assemblies. The appellants had sought classification of the said goods under sub-heading No. 8485.90 of the Central Excise Tariff as machinery parts. The Assistant Collector of Central Excise, Faridabad, had classified the goods under sub-heading No. 4009.92 as 'Hoses of Vulcanised Rubber'. The Collector of Central Excise (Appeals) had confirmed the classification as decided by the Assistant Collector of Central Excise, Faridabad.

2. The matter was heard on 27.10.1998 when Shri M.P. Devnath, advocate, assailed the impugned order-in-appeal on the ground that the hose assembly manufactured by the appellants was of hardened rubber and was outside the scope of heading No. 40.09 of the Central Excise Tariff. He referred to the test report of the National Test House, Alipur, Calcutta and submitted that the report had been brushed aside by the learned Collector of Central Excise (Appeals) without cogent reasons.

3. In reply, Shri Sumit Dass, JDR, submitted that the sample subjected to the test by the National Test House was not authentic and that the assessee on his own had got sample drawn and tested and that it could not be said that the sample got tested was representative sample. It was necessary that the sample was authentic which in this case it was not. He pleaded that no classification could be settled on the basis of such unauthenticated sample. The product was flexible while the hard rubber connotes inflexibility. He referred to the order-in-original passed by the Assistant Collector of Central Excise, Faridabad, wherein the characteristics of hard rubber had been referred to with reference to the Harmonised Commodity Description and Coding System (HSN) Explanatory Notes. The learned JDR further submitted that the matter was entirely covered by the Tribunal's decision in the case of Collector of Central Excise, Bangalore v. Aerolex Hose Industries .

4. We have carefully considered the matter. The issue for our consideration is, whether the fuel and fuel oil hose assembly manufactured by the appellants was classifiable under sub-heading No.8485.90 or under sub-heading No. 4009.92 of the Central Excise Tariff.

Heading No. 84.85 covered machinery parts not containing electrical connectors, insulators, coils contacts or other electrical features, not specified or included elsewhere in Chapter 84 of the Central Excise Tariff. Sub-heading No. 8485.10 covered ships' propellers and blades therefor. Sub-heading No. 8485.90 under which the appellants had claimed classification of their goods was a residuary entry covering "other" machinery parts not containing electrical connectors etc. and which were not otherwise classifiable as ships' propellers and blades therefor. Heading No. 40.09 covered tubes, pipes and hoses of vulcanised rubber, other than hard rubber, with or without their fittings (for example, joints, elbows, flanges). Sub-heading No.4009.92 covered those goods which were otherwise classifiable under sub-heading No. 40.09 and where the rubber compound content was not less than 25% by weight and which were designed to perform the function of conveying air, gas or liquid. According to the show cause notice, the hose assembly in question was made of unhardened vulcanised rubber and was fitted with metallic fittings and was designed to perform the function of conveying oil, air or liquid.

5. Under the Central Excise Tariff, Heading No. 40.09 covered, among others, hoses of vulcanised rubber with or without their fittings. It has been explained in the HSN Explanatory Notes under Heading No. 40.09 that the hoses including hose pipes reinforced by stratification, consisting, for example, of one or more 'plies' of textile fabric or one or more layers of parallelised textile threads, or metal threads, embedded in the rubber were included in that heading. Such hoses could also be covered with a sheath of thin fabric or with gimped or plaited textile yarns; they could also incorporate an internal or external spiral of wire. It has been further explained that the hoses remained classified in this heading even if presented with fittings (for example, joints, elbows, flanges) provided that they retain the essential character of piping or tubing.

6. The appellants had contended that their goods were made pre-dominantly of hard rubber of various sizes and lengths with wire braiding, cotton re-in-forced usually with various end connections like banjos, nuts and nipples of free cutting steel and brass. We find that the hard rubber had been separately classified in the tariff under Heading No. 40.17. By way of example 'ebonite' has been mentioned.

Another variety of hard rubber (also called hardened rubber) is vulcanite. Hardened rubber is obtained by vulcanising rubber (including synthetic rubber) with a high proportion (more than 15 parts per 100 parts of rubber) of combined sulphur. Hardened rubber is practically inflexible and inelastic. Hose is a flexible tube used in conveying liquids (refer page 766 of McGraw-Hill Dictionary of Scientific and Technical Terms, Second Edition). We find that the goods of the appellants had been described by them in their invoices as flexible.

(Refer pages 17 to 22 and pages 28 to 31 of the paper book).

7. The appellants had pleaded before the Collector of Central Excise (Appeals) that the oil assemblies manufactured by them were made of synthetic hard rubber of various sizes and lengths. The expression synthetic rubber applies to the following products: (4) (a) Unsaturated synthetic substances which can be irreversibly transformed by vulcanisation with sulphur into non-thermoplastic substances which, at a temperature between 18C and 29C, will not break on being extended to three times their original length and will return, after being extended to

twice their original length, within a period of five minutes, to a length not greater than one and a half times their original length. For the purposes of this test, substances necessary for the cross-linking, such as vulcanising activators or accelerators, may be added; the presence of substances as provided for by Note 5(b)(ii) and (iii) is also permitted. However, the presence of any substances not necessary for the cross-linking, such as extenders, plasticisers and fillers, is not permitted.

(iii) very small amounts of the following; heat sensitive agents (generally for obtaining thermosensitive rubber latexes), cationic surface active agents (generally for obtaining electropositive rubber latexes), antioxidants, coagulants, crumbing agents, freeze resisting agents, peptisers, preservatives, stabilisers, viscosity control agents, or similar special purpose additives.

Synthetic rubber and hard rubber are two separate products. The appellants had incorrectly used the appellation 'hard' while indicating their process of manufacture.

8. The learned Counsel for the appellants had referred to the test report of the National Test House, Alipur, Calcutta. We find that the origin of the sample received by the National Test House on 13.10.1992 is not clear. It is not known as who had drawn the sample, whether the lot from which the sample was drawn was representative, whether the sample had been correctly drawn, packed and despatched etc. The sample remained unauthenticated. No reliance has rightly been placed on such a test report. As we have discussed above, there is a separate specific tariff entry for hard rubber (Heading No. 40.17 of the Central Excise Tariff). An example of the hard rubber had been given as 'ebonite' in the tariff entry itself. In the HSN Explanatory Notes relating to Heading No. 40.17, it has been explained that the hard rubber articles included the vats, troughs, articles of tubing, knife handles and knobs, grip-handles and the like of all kinds, sanitary and hygienic articles. We do not find that the goods of the appellants were akin to any of these.

9. We find that the matter is entirely covered by the Tribunal's three Members decision in the case of CCE, Bangalore v. Aerolex Hose Indus.

. The Tribunal had held that the hose assemblies made out of vulcanised rubber hose, reinforced with metal braiding were correctly classifiable under sub-heading No. 4009.92 of the Central Excise Tariff and were not classifiable under Chapter 84 as parts of the machinery. We find that the counsel for the appellants had admitted in that case before the Tribunal that the hose assemblies were made out of vulcanised rubber and were other than hard rubber. Paras 8 and 9 from that decision are extracted below: 8. Much was sought to be made by advocate of the fact that the Assistant Collector in his order had accepted the fact that hose assemblies are designed for specific use in the excavators manufactured by the appellant, and that, even within the same excavator, different types and sizes of assembly would require for different functions without their being interchangeable. According to him, this establishes that the goods were parts; once this is accepted, the goods would necessarily fall under Chapter XVI. 9. We are not persuaded by this argument. It cannot be denied that the hose assemblies are parts of the excavators, as commercially understood or in engineering or indeed common parlance, since the excavator is not complete and cannot be used without them. But a leap from this fact to the conclusion that these are parts classifiable under Chapter 84 is not justified. An item may be a part of a machine, in the sense that the machine would be incomplete without it, and still be classifiable elsewhere than under Section XVI. This section excludes from its scope, various articles which are clearly parts of machinery or other goods falling under that section - for example, parts of general use, base metal, plastic, interchangeable tools of Heading 82.07. The structure of the tariff, and the Harmonised Code on which it is based, does not always contemplate classification of parts of a machine or an article with that machine or article, as a simple reading of the chapter and section notes would show. The fact that Heading 40.09 includes tubes, pipes and hose "with or without fittings" adds emphasis to our conclusion, in that while hose of a particular size and diameter can be capable of use in more than one application, the size and nature of the end fittings would determine specific application within a machine or elsewhere. The Explanatory Notes to HSN at page 591 make it clear that "tubes, pipes and hose remain under Heading 40.09 even if presented with fittings provided that they retain the essential character of piping or tubing. It is precisely for this essential character that the assemblies are designed i.e.

conveying hydraulic fluid. These are therefore rightly classifiable under sub-heading 4009.92.

9A. We now turn to the decisions cited by the appellant. No doubt, the Aerolex Hose decision has been set aside by the Supreme Court, but, as we have observed the Truck Parts continues to stand independently of this fact. The decision in therefore, does not have any relevance to the present issue. The ratio in 1991 (34) ECR 160, that a Bench is not bound by an earlier decision if there is a change in law or fresh material has to be considered obviously would not apply to the present case, there being neither a change in law nor any fresh material to consider.

The Andhra Pradesh High Court decision in Pioneer Electronics v. State of Andhra Pradesh was a matter relating to the Andhra Pradesh General Sales Tax Act. It has not been shown that the various entries in the schedule to that Act were in pan materia with the Central Excise Tariff Act. The M.P. High Court decision in Ratlam Bone and Fertilizer Co. v. State of M.P. to the effect that "fertilizer" is more general than to the expression "powdered bone" in fact, supports our conclusion that the most specific should be preferred to the general. The decision which held that cloth manufactured by the powerloom has to be distinguished from the cloth manufactured by the mills and the decision in , Star Radio Electronics v. Commissioner of Sales Tax relating to nature of appliance and apparatus and are not relevant. The decision in primary rule of construction is that words in a statute must be considered in an ordinary sense and intention of the legislature must be found in the words used in the statute. This is what we have endeavoured to do. The decision in AIR 34 1957 Privy Council, 1994, relied upon is that in the event of conflict between two provisions of statute, the latter must prevail as it "speaks the last intention of the makers". The advocate pointed out that this principle had been incorporated in the Interpretative Rule 3(c) that heading which occurs last must be preferred. The recourse to this sub-rule however is only to be had as a last resort, as that sub-rule itself provides that it would apply where the goods cannot be classified by the principles in Sub-rule 3(a) or (c). We have not found it necessary to go beyond Sub-rule 3(a). We are unable to see the relevance of the decision in .

10. In view of the above discussion, we do not find any merit in this appeal and the same is rejected.

11. The operative part of the order was announced in the open court on 27.10.1998.

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