

**Collector of Central Excise Vs. Inchek Tyres Limited**

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

**Decided On :** Mar-23-1987

**Reported in :** (1987)(12)ECC144

**Appellant :** Collector of Central Excise

**Respondent :** inchek Tyres Limited

**Judgement :**

1. Under notice dated 26-4-1982 a demand was made on the Respondents M/s. Inchek Tyres Ltd. for payment of duty under Tariff Item 68 Central Excise Tariff on scrap of tyres and tubes removed by them without payment of duty during the period 4-5-1975 to 9-12-1978. The respondents denied liability claiming that such scrap was not an excisable product. By order dated 29-6-1982 the Deputy Collector of Central Excise, Calcutta held that the scrap was liable for payment of duty under Tariff Item 68 Central Excise Tariff but, in confirming the demand, restricted it to the period 26-4-1977 to 9-12-1978 holding that the demand for the earlier period was barred by time. He further imposed a penalty of Rs. 2,000/-. On appeal the said order was set aside by the Collector (Appeals) under order dated 29-11-1982. This appeal by the Collector of Central Excise, Calcutta is against the said order.

2. None appeared today on behalf of the respondents in spite of issue of notice. We have heard Smt. Saxena for the Department and have perused the records.

3. From the orders of the lower authorities it transpires that the scrap on which duty was demanded arose in two ways (1) in the course of manufacture of tyres and tubes and (2) by way of scrapping of the tyres and tubes which were found not marketable and were thereupon scrapped.

On the question whether scrap rubber arising in the course of manufacture of tyres and tubes would be chargeable to duty under Tariff Item 68 Central Excise Tariff this Tribunal has held that they would be so chargeable. This was in the case of Super Tyres (P) Ltd. v. Collector of Central Excise [1984 Vol. 3 ETR 305]. We see no reason to differ from the said conclusion in the present appeal.

4. The other category of scrap is that which arose by scrapping of fully manufactured tyres and tubes which appear to have been scrapped evidently for the reason that they were found not marketable. If scrap arising during the course of manufacture would itself be liable for duty under Tariff Item 68 Central Excise Tariff, the scrap arising by way of the scrapping of the fully manufactured tyres and tubes for the reason mentioned earlier would also be liable for duty under Tariff Item 68 Central Excise Tariff.

5. In the circumstances we allow this appeal, set aside the order of the Appellate Collector and restore the order of the Assistant Collector.

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