**Commissioner of Customs Vs. Mahindra Engineering and**

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**SooperKanoon Citation** : sooperkanoon.com/33506

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

**Decided On :** Dec-18-2003

**Reported in** : (2004)(166)ELT395Tri(Mum.)bai

**Judge** : J Balasundaram, A M Moheb

**Appellant** : Commissioner of Customs

**Respondent** : Mahindra Engineering and

**Judgement** :

1. This is a Revenue's appeal against the order of the Commissioner (Appeals) who held that self amalgamating tapes and semi conducting tapes imported under two bills of entry are classifiable under chapter sub-heading 4005.10 of the schedule to the Customs Tariff Act and are therefore freely importable. He rejected the lower authority's contention that they are classifiable under sub-heading 4005.91. Goods covered under 4005.91 are restricted under the import policy as it existed then. The lower authority, after classifying the said goods under 4005.91, confiscated them and imposed a penalty as the importers did not possess a valid import licence.

2. In the impugned order, the Commissioner (Appeals) set aside the order of the lower authority on the ground that it had been in an established practice to classify sheets compounded with carbon black under sub- heading 4005.10; the imported sheets are actually used for high voltage cable joints; the order of the lower authority was not a speaking order; that he inspected the goods and found to be

packed in 10 metre rolls and the goods are not liable for confiscation as they are freely importable.

3. The Revenue files this appeal against the said order. The grounds of appeal are that heading 40.05 of CTA, 1975 reads as "compounded rubber, unvulcanised in primary form or in plates, sheets or strips". The arrangement of sub-headings of heading 40.05 clearly shows that sub- heading 4005.91 covers plates, sheets and strips whereas earlier sub- headings refer to the goods in primary forms as explained in chapter Note 3 and read with relevant explanatory notes to HSN. The further ground is that the goods under import are consumer goods and therefore are covered under entry sr. No. 40059109.10 of ITC (HS) classification of Export-Import Items w.e.f. 25.3.1996. A valid licence is required for its import, which the respondents do not have. The prayer is that the order of the Commissioner (Appeals) should be set aside and the order of the lower authority upheld.5. Chapter sub-heading 4005.10 reads thus, "compounded with carbon black or silicon" and 4005.91 reads thus, "plates, sheets and strips".

It is clear from the headings that plates, sheets and strips compounded with carbon black are covered under sub-heading 4005.10. Other plates, sheets and strips are covered under sub-heading 4005.91. It is clear from the literature of the supplier that the goods in question are covered with carbon black and are adhesive in nature. To rule out classification under sub-heading 4005.10, it has to be first established that the imported goods are not compounded with carbon black. The Revenue has failed to do so either by way of a chemical test or by way of any expert opinion as against the claim of the importers mat they are so covered. The Revenue's claim that the arrangement of sub-headings under heading 40.05 indicates that the primary goods are classified first and then the residuary ones later is devoid of any merit. What are classified under sub-heading 4005.10 are goods compounded with carbon black, as the heading itself reads. Since the goods in question are compounded with such material, they have to be classified under that heading and not under the heading which speaks of 'others'. 'Others' automatically means other than the one mentioned prior to a particular sub-heading. The department's appeal has no merit. The goods are correctly classifiable under sub-heading 4005.10 and are therefore freely importable.

6. The Revenue's appeal is rejected. The order of the Commissioner (Appeals) is upheld.