

Cce Vs. Madras Rubber

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-25-2004

Reported in : (2005)(98)ECC205

Judge : A T V.K., P Bajaj

Appellant : Cce

Respondent : Madras Rubber

Judgement :

1. In this appeal which has been filed by the Revenue against the impugned order in appeal vide which the Commissioner (Appeals) has affirmed the order in original of the adjudicating authority, the issue relates to the availability of benefit of Notification No. 8/99-CE dated 28.2.99 to the respondents in respect of their product known as Tube Repairing Compound. The lower authorities have allowed the benefit of this notification to the respondents by classifying the product under sub-heading 4006.90 of the CETA, after rejecting the classification under sub-heading 4005.90 of the Schedule, propounded by the department.

2. We have heard both the sides and gone through the record.

Admittedly, the respondents are engaged in the manufacture of Rubber products i.e. Tread Rubber and Tube Repairing Compound falling under Chapter 40 of the CETA. The dispute is only regarding the classification of Tube Repairing Compound. Heading 40.05 of Chapter 40 relates to the classification of

"Compounded Rubber, unvulcanised, in primary forms or in plates, sheets or strip, other than the forms and articles of unvulcanised rubber described in heading No. 40.06".

whereas heading 40.06 covers "Other forms (for example, rods, tubes and profile shapes) and articles (for example, discs and rings), of unvulcanised rubber." 3. The Adjudicating Authority after physically examining the product, opined that it is of profile shape of unvulcanised rubber and as such, is covered under heading 40.06 (sub-heading 4006.90). The learned Commissioner (Appeals) while relying upon these observations and affirmed the order in original. But the SDR has produced before us a sample of the product (which was taken from the factory premises of the respondents) and its visual examination leaves no doubt in our mind that the observations made regarding its shape by the adjudicating authority and affirmed by the Commissioner (Appeals) are virtually incorrect. It is in a square shape in the form of sheet and by no stretch of imagination it can be said to be in the shape of profile.

When the sample was shown to the learned Counsel in the Court, he failed to justify the findings of the lower authorities below that the product of the respondents in question is in a profile shape. To us, it appears that the lower authorities had no idea about the distinction between the profile and the sheet. The outline of an object is normally called a profile. A picture of representative of the side view of the article, may also be said to be a profit, but an article square in shape giving its full view, cannot be said to be a profile. As observed about, from the sample produced before us and the genuineness of which has not been disputed by the Counsel, as it carried the signatures of the representative of the respondents also, the product manufactured by the respondents i.e. Tube repairing compound, is in the form of square sheet and as such, could not be held to be of a profile shape falling under heading 40.06. The view taken by the lower authorities in this regard is wholly erroneous and devoid of law. The product of the respondents squarely falls within the four corners of heading 40.05 (sub-heading 4005.90) and as such, benefit of Notification No. 8/99-CE dated 20.2.99 could not be extended to the respondents by the lower authorities.

4. In view of the discussion made above, the product in question is held to be classifiable under heading 40.05 (sub-heading 4005.90) and the respondents are liable to pay duty on the clearances made by them during the period in question as detailed in the show cause notice. The impugned order of the Commissioner (Appeals) is set aside. The appeal of the Revenue is accepted with consequential relief available under the law.

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