

Collector of Central Excise Vs. Apex Rubber (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-21-1987

Reported in : (1987)(14)ECC379

Appellant : Collector of Central Excise

Respondent : Apex Rubber (P) Ltd.

Advocate for Def. : Shri. M. Chandrasekharan

Judgement :

1. The Revenue has filed this appeal against the order-in-appeal dated 26.8.1982, passed by the Appellate Collector, Central Excise, Madras.
2. The respondents manufacture inter alia latex foam sponge into specific shapes and sizes as per consumers specifications and clear them from their factory. The latex foam sponge obtained in specific shapes and sizes have been described as "bus seats" and "scooter seats" and classified under TI 16A(1). Subsequently, the respondents filed a classification 6.2/81/82, dated 25.1.1982 wherein they stated to have classified the latex foam sponge described as "bus seats" and "scooter seats" as motor vehicle parts non-specified falling under T.I. 68 of the C.E.T. The Assistant Collector rejected the assessee's claim and classified the goods under TI 16A(1).
3. The respondents preferred an appeal and the Appellate Collector under the impugned order held that the articles should be classified under T.L 68. He was of

the view that the respondents manufacture such cushions to a shape and quality depending upon the actual use. He was also of the view that the unfinished product was capable of being used only as seat cushion. He classified them as parts of motor vehicles.

4. Smt. Dolly Saxena, SDR urged that in order to become identifiable motor vehicle parts, namely, bus seats and scooter seats latex foam sponge manufactured and cleared by the respondents had to be covered with a leather or rexine wrapper, before it can be used as such. She, therefore, urged that the products should be classified under T.L 16A(1).

5. Shri M. Chandrasekharan, learned counsel for the respondents urged that the functional use of the products has also to be taken into consideration for the purpose of assessment. He placed reliance on the ruling reported in M/s. Atul Glass Factory v. U.O.I, & Others [1986 (25) ELT W3 (S.C.)]. He stated that the persons in the trade identified the product as bus seats and scooter seats and have placed orders, not, for sponge but for bus seats, scooter seats etc.

6. The point for decision in this appeal is whether the products in dispute be classified under TI 16A(1) or under T.I. 68. Item 16A(1) of the C.E.T. prior to 1.3.1982 read as "latex foam sponge". After 1.3.1982 also, the item read as "latex foam' sponge". The explanation to the item includes articles made of latex foam sponge. The goods were cleared as "latex foam sponge" in specific shapes and sizes both before and after 1.3.1982. The Appellate Collector was of the view that latex foam sponge in specific shapes and sizes are classifiable as motor vehicle parts under TI 3^A prior to 1.3.1979 and under TI 68 as non-specified motor vehicle parts after 1.3.1979. The process of manufacture has been set out by the respondents as follows : "Latex cushions are made by frothing 60% centrifuged liquid latex by mechanical whipping, after adding necessary frothing chemicals. This whipping is carried out in metal bowls and using wires whisks.

Different chemicals required for vulcanisation and improved gaeing qualities are also added before whipping. When the frothed latex reached the desired volume, a delayed action gelling agent is added and thoroughly mixed. At this stage when the froth is still liquid, the same is transferred to aluminium moulds, which is to give

the desired shape of the article produced. Then the liquid corn-pound starts setting gradually inside the mould. The next stage of vulcanisation. For this once the gelling is over, the moulds containing the gelled froth are kept under steam heating.

After heating the moulds for the required time, they are opened and the vulcanised cushions are stripped and washed in water. The washed cushions are squeezed in rollers and then fed into drying chambers.

After drying, the cushions are trimmed, inspected and kept for despatch." It is seen from the above process that frothed latex is transferred to aluminium moulds to give a desired shape of the article. The frothen latex at that stage is still in the form of a liquid and gradually sets in the mould. The items are produced to desired specifications laid down by the consumers. In order to fix the tariff classification, resort to the residuary item should be the ultimate resort and initially we have to find out whether the product could be classified in any one of the other descriptions. If item 1 to 67 are not attracted, then the levy under TI 68 could be justified. From the facts of the case, it is clear that the items are latex foam sponge "in the form of bus seats, scooter seats" etc. The product have a close affiliation to TI 16A(1) because they are nothing but latex foam sponge. TI 16A(1) does not specify that the product should not be in specific size or shapes. From the process of manufacture set out earlier, it is clear that the product is nothing but latex foam sponge.

The mere fact that the frothed sponge is transferred to aluminium moulds of particular shapes will not take away the products out of the ambit of the Tariff Item 16A(1).

7. It was vehemently urged that the ratio of the Supreme Court decision in the case of M/s. Atul Glass [1986 (8) E.C.R. 513 - 1986 (25) ELT 473 (S.C)] would apply to the case. The question for consideration in that appeal was in regard to the items mirrors, wind screens, rear screens and door screens. The computing entries were glass-ware under T.I.23ACO and Item 68 in the case of glass mirrors and 23A(*), 34A and 68 in the case of glass panes for motor vehicles. In paragraph 8, it is observed, "It is a matter of common experience that the identity

of an article is associated with its primary function. It is only logical that it should be so. When a consumer buys an article, he buys it because it performs a specific function for him." 8. Shri Chandra Sekharan laid emphasis on these observations and argued that the products herein were purchased by the consumer not as latex foam sponge but, as scooter seats, bus seats etc.

9. We are of the view that the decision cited by the learned counsel for the respondents has to be adverted to in the particular facts of the case. The Supreme Court has observed that a glass mirror could not be regarded as glass. In paragraph 7, it is observed that what was a piece of glass simpliciter has not become a commercial product with a reflecting surface. The glass sheet has undergone a complete transformation when it emerged as a glass mirror. Under those circumstances, it was difficult to classify them as glass-ware for, glass-ware meant merchandise made of glass and understood in its primary sense as glass article.

10. The facts of the present case are totally different. There is no transformation of the liquid froth foam sponge. It merely takes the shape of the mould into which it is poured. Functional aspect referred to has no significance because the functional use of mirror is totally different from the functional use of a glass. Even in respect of wind screens, we notice that parts and accessories of motor vehicles were specifically mentioned in Notification No. 101/71-C.E., dated 29.5.1971 as amended. The Finance Bill of 1979 restricted the scope of the entry 34 A to 15 items. Parts and accessories of motor vehicles and tractors falling under T.I. 34A were exempted from the whole of duty of excise leviable thereon if they were intended to be used in the manufacture of assembled motor vehicle parts as original equipments. Hence it was held that since the wind screen is part and accessory of motor vehicles, it would attract duty under T.I. 68 as the item has not been mentioned under TI 34A as amended. The ratio of that ruling will not apply to the present facts.

11. The Appellate Collector has relied on an earlier decision of the Central Government in the case of I.C.T.D. Co. wherein it was held that such cushions were manufactured to a shape and quality depending upon the actual use and

hence in the absence of any definition of latex foam sponge, they could be more appropriately classified as motor vehicle parts. But it must be said that in the form in which the products are cleared, they cannot be considered as scooter seats or bus seats etc.

for, the latex foam sponge in the particular form could not straightaway be used or fitted for such purposes. It has to be covered with rexine or leather before it could become a part of motor vehicle.

It is not mere ornamentation -or additional fitting but a primary necessity before it could assume the name, character and use as a bus seat or scooter seat. In their classification list, the respondents have mentioned the items as latex foam sponge as the main heading and have specified bus seats, bus back, bus cushions, scooter seats etc. It is, therefore, clear even from the classification list that the product is only a latex foam sponge and was correctly classified under T.I.16A(1). The latex foam sponge does not lose its character as sponge by the process of moulding. We are, therefore, of the view that products were rightly classified under TI 16A(1) and not under TI 34A or TI 68.

13. I have read the order proposed by learned Brother Shri Santhanam.

While I agree with his conclusion, I would like to add a few words of my own.

14. This Tribunal's decision in the case of C.C.E., Madras v. M.M.Rubber Co. Ltd. Madras, 1984 (15) ELT 198 is squarely on the issue posed in the present appeal. It was held therein that latex sponge cushions seats (naked, without covers) were classifiable under Item No.16A(1), GET even in the period prior to 1.3.1979 (when the entry was amended' to include articles of latex foam sponge), in preference to Item No. 34A, GET, as unspecified parts or accessories of motor vehicles. There is no doubt that the subject goods are made of latex foam sponge and that they are made not out of larger pieces of sponge but arempulded into the shape of bus seats etc. at the stage of manufacture of the sponge itself. Given the method of manufacture described by the respondents as set out in a note furnished by them to the Department (copy filed by the Collector), the frothed centrifuged liquid latex has to assume the shape of the mould into which it is poured which, in the present

case, happens to be designed after bus seats etc. Can the fact that the shape of the solidified latex foam sponge is that of a bus seat etc., be decisive of the classification In this context, we must remember that the present dispute pertains to a period when Item No. 34A, GET had a restricted scope covering only specified parts and accessories of certain vehicles which did not, however, include seats for motor vehicles. The further point to note is that the pieces of sponge in the form or shape of bus seats etc. need to be further worked upon (rexine covering etc.) before they can be used for fitment to motor vehicles. Given this background, can it be said that the Item "latex foam sponge" [16A(1), CET] is less specific to cover the goods than the non-descript residuary Item No. 68 - "all other goods not elsewhere specified"? To my mind, the answer is in the negative.

15. In the case of Atul Glass Industries [1986 (25) ELT 473 (SC)], the goods were glass mirrors. Plain glass sheet, on being subjected to the several processes described in para 3 of the judgment - particularly silvering - acquired distinctive characteristics which made it different from plain glass sheet. It could no longer be looked upon as mere plain glass sheet nor, as the Court observed, was it any longer known as glassware. It is in this background that the Court held that mirrors would be classifiable under the CET, not as glassware under Item No. 23A(4) but as mirrors which, being unspecified in the Schedule, fell under Item No. 68. In the present case, though the latex foam sponge has undoubtedly acquired the shape of bus seats etc., it, has not, unlike in the case of glass mirror, undergone such a complete or considerable transformation that the moulded product no longer is identifiable as latex foam sponge. It continues to be sponge moulded into a particular desired shape. And, there was no specific item, more specific than "latex foam sponge", to cover the moulded goods. If the bus seats etc. had been cut out of bigger pieces of latex foam sponge to consumers' specifications perhaps (but only perhaps) there may have been an arguable case for contending that these are articles of sponge and not sponge itself. Here, however, we find that it is the sponge itself solidified in moulds to the desired sizes and shapes.

16. As seen from para 13 of the Supreme Court judgment in Atul Glass Industry case (supra), wind screens, rear screens and door screens were manufactured from sheet 'glass, unlike in the present case, where, as we have noted, bus seats

etc. have not been fabricated from out of bigger pieces of sponge. Besides, the glass is first given shape and size according to customers specifications and thereafter subjected to the process of toughening. As the Court has noted, wind screens, etc.

are fabricated articles. It is in this context and having regard to the considerations in the case of glass , mirrors' that the court held that wind screens, etc. could not be described as glass or glassware under Item No. 23A(4) but more appropriately as motor vehicles parts or accessories.

17. In view of the foregoing discussions, I agree that the subject goods are classifiable under Item No. 16A(1), CET and that the appeal merits to be allowed.

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