

Collector of Central Excise Vs. Poly Flex (P) Ltd.

Collector of Central Excise Vs. Poly Flex (P) Ltd.

SooperKanoon Citation : sooperkanoon.com/4093

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-20-1988

Reported in : (1988)(15)ECC257

Judge : S Jha, V.P., P Jain

Appellant : Collector of Central Excise

Respondent : Poly Flex (P) Ltd.

Judgement :

1. Since a common question of classification is involved in both the matters, they are being disposed of by a common order.

2. Question involved in these appeals is whether saddles for scooters/motorcycles manufactured by the respondent-company according to the process mentioned hereafter are classifiable by the tariff item 15A(4) of Central Excise Tariff as "articles made of polyurethane foam" or under tariff item 68 as that tariff stood before 28-2-1986.

Manufacturing process of the saddles is described in one of the orders-in-original dated 28-5-1986/8-9-1986 as follows:-- To manufacture the seat saddles, the imported raw material like polyol and polyisocyanate are used. These raw materials are poured into moulds and heated to a certain temperature. These moulds are closed immediately and the material inside is allowed to expand to the shape of the mould for a required time. Then these seat saddles are removed from

the moulds and are subject to compression and after compression, these are kept in racks and allowed for cooling. After inspection of these goods they are stored in a bonded warehouse. In the case of Bajaj seat saddle, a tapping cloth is attached to the seat and the edges of bottom of the seat. In the case of Delux seat a steel wire is inserted inside.

This process of manufacture is known as single shot injection moulding process, unlike the process used for manufacture of polyurethane foam in the form of slabs and blocks. Sometimes, the seats are cleared in the form of metal base attached to the seat which is inserted in the mould at the time of manufacture and gets attached to polyurethane foam seat manufactured in the shape of the mould. The original authority has classified the seat saddles manufactured in the above manner as articles of polyurethane foam falling under tariff item 15A(4). The original authority was of the view that since the use of a commodity is not spelt out in tariff item 15A(4) the fact that seat saddles is used as scooter/ motor-cycle accessory is not material for the purpose of classification. For this purpose, he has relied upon the Supreme Court's judgment in the case of *Dunlop India Ltd. v. Union of India and Ors.* AIR 1977 SC 597. Based on this judgment of Supreme Court, the original authority has stated that CEGAT, New Delhi vide their order No. 317/85 dated 30-9-1985 1986 ECR 438 in the case of *Quality Sales Corporation v. Collector of Central Excise, Chandigarh* held that axle studs are screw studs and therefore, fall under tariff item 52 which is more specific than tariff item 34-A. On the basis of this reasoning, the original authority has held that irrespective of the fact that seat saddle manufactured by the respondent-company is used for scooter/motorcycle, since they are made of polyurethane foam, they would be classifiable under tariff item 15A (4).

The respondent-company herein thereafter successfully appealed to the Collector of Central Excise, Madras. The learned lower appellate authority held that in classifying articles for purpose of central excise levy, specific classification with reference to their make or use has to be taken into consideration and not the general description such as articles made of polyurethane foam". The lower appellate authority found that the order-in-original of the Asstt. Collector was not correct inasmuch as it was not a question of end-use where more than one end-

use are possible but the goods were specifically designed for use as motor-vehicle accessories. He accordingly classified the products under tariff item 68.

The department has now filed an appeal against the aforesaid order of the Collector of Central Excise (Appeals) reiterating more or less the same grounds as taken by the original authority in confirming the classification under tariff item 15A(4).

3. Learned JDR appearing for the appellant-Collector has stated that the respondent-company imports the raw material for the product, and these were charged to countervailing duty under tariff item 15A of central excise tariff and the respondent-company thereafter took pro forma credit of countervailing duty paid on such raw materials. For the purpose of manufacturing process, the learned JDR has drawn attention to para. 27.5 of the book named "Plastics Materials" by Sh. J.A. Brydson. He has drawn attention to the fact that the product is nothing but flexible polyurethane foam and since it is clearly an article, therefore, it would be covered by the tariff item 15A(4). He has also placed great reliance on Tribunal's decision in the case of Collector of Central Excise, Madras v. Apex Rubber (P) Ltd. [1987] 14 ECC-T 379.

He has stated that in that case too, the question was whether bus seats and scooter seats of latex foam sponge were covered by the tariff item 16A(1) or did they fall under tariff item 68. It has been held therein by the Tribunal as follows:-- 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 customers' 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.

Learned JDR has also relied upon Tribunal's decision in the case of Sahney Paris Rhone Ltd. v. CCE, Hyderabad [1987] 13 ECC-T 370. This judgment of the Tribunal relates to classification of self-starter motor. The Tribunal has held in this case that it is classifiable under tariff item 30 instead of 68 (as part of the motor vehicle). Both the aforesaid judgments of the Tribunal have distinguished the reliance placed by the assesseees on Supreme Court's judgment in the case of Atul Glass Industries on the ground that the said judgment of the Supreme Court was based on the peculiar facts and circumstances pertaining to the process of manufacture of glass mirrors and commercial parlance of the product.

4. The learned advocate Sh. A.K. Jain appearing for the respondent- company, on the other hand, contends that the product is clearly classifiable under tariff item 68, CET inasmuch as the scope of the tariff item 15A has been decided upon by the Hon'ble Supreme Court in its judgment in the case of Geep Flashlight Industries Ltd. v. Union of India and Ors. [1986] 8 ECC 53 (SC) : 1985 (22) ELT 3 (SC). In that case, the learned Advocate states that Supreme Court was considering the classification of plastic torches. The assessee had contended that plastic torch was covered by tariff item 15A (2) which read as under:-- Articles made of plastics, all sorts including tubes, rods, sheets, foils, sticks, other rectangular or profile shapes whether laminated or not, and whether rigid or flexible, including lay flat tubings and polyvinyl chloride sheets....

It has been held therein by the Supreme Court, according to the learned advocate, that: Articles made of plastic means article made wholly of commodity commercially known as plastics, and not articles made from, plastics along with other materials. By no canon of construction, a plastic torch can be read in conjunction with plastic tubes, rods, sheets, foils, etc., made of plastics. Plastic torch is a distinct and different commodity commonly known in the market as torch.

Ordinarily, torch is not described by the name of the material used in the tube in which the device of torch is housed. The commodity known, advertised, sold and offered in the market is torch. Prefix plastic merely describes the quality of torch as distinguished from other type of torches. It is not sold primarily as plastic tube.

It has been emphasized by the learned advocate for the respondent company that in the instant case too, the product is known as saddles.

It is available in the shops dealing in the parts of motor vehicles.

These saddles are not normally available in, the shops where articles of polyurethane foam like mattresses, cushions, pillows, etc., are available. The seats are also not made wholly of polyurethane foam as has been described in the process of manufacture. They are either attached to metal base or with some cloth on the edges.

Distinguishing the judgment of the Tribunal reported in [1987] 14 ECC-T 379 mentioned supra, the learned advocate has stressed that the latex foam sponge seat, either of bus or scooter, was held to be as latex foam itself and not as article as is apparent from para. 15 of the order by Shri G. Sankaran, learned Sr. Vice-President, member in the Bench of the Tribunal. In that case, the learned advocate has further stressed that seats were to be further processed before they could be used as seats of buses or of scooters. In the instant case, the learned advocate says that no further processing is required. These are straightaway used as they are manufactured as saddles for scooters/motor cycles. The learned advocate, therefore, asserts that the ratio of the decision in [1987] 14 ECC-T 379 cannot be applied to this case. Similarly, he has stated that the other judgment of the Tribunal relating to self-starter motor is also on the peculiar facts and circumstances of that case and cannot have any relevance to the facts and circumstances of the case.

Learned advocate has again strongly relied on para. 8 of the Supreme Court's judgment in the case of Atul Glass mentioned above, particularly, the following portion:-- 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. There is a mental association in the mind of the consumer between the article and the need it supplies in his life. It is the functional character of the article which identifies it in his mind.

In the instant case, the learned advocate asserts that it is the saddle or the seat which the consumer buys from motor parts dealer. He does not ask for a polyurethane foam saddle or seat or latex rubber seat or a seat stuffed with cotton wool. Therefore, essentially, it is a motor vehicle accessory, i.e., a saddle or a seat for a motor cycle or a scooter for a common man, irrespective of the fact of what material it is made of. Applying the test of commercial parlance, therefore, it should be assessed as such and hence under item 68, GET. He has also relied upon Andhra Pradesh High Court judgment in the case of State of Andhra Pradesh v. T.V. Sundaram Iyengar, & Sons Ltd. [1987] 65 STC 41.

In that case, it was held that motor bulbs were used in motor vehicles and not for any other purpose. Therefore, having regard to common understanding and commercial parlance, they could not be taken as electrical goods. Similarly, he relies on Supreme Court's judgment of Siemens Engineering Manufacturing Co. Ltd. v. Union of India and Ors.

(1976) Supplementary Supreme Court Reports 489 wherein it was held that pot motors fell within the description of customs tariff item 72(3) since they were specially designed for use in spinning machines for manufacturing thread and that they were indubitably essential for the working of the spinning machine and were incapable of use for any other purposes. Therefore, pot motors were clearly component parts of the rayon spinning machines. He has again emphasized that in the case of Kirloskar Filters Pvt. Ltd. predominant use has been held as an appropriate criterion for classifying product. Leave apart the predominant use, its only use is as saddle for scooter/motor cycle.

The product should be classified as parts of motor vehicle not otherwise specified and therefore, fall under tariff item 68.

5. We have carefully considered the pleas advanced from both sides.

There are two competing entries for the product in question. The department contends that classification should be under tariff item 15A(4) whereas the respondent-company (assessee) contends that it should be tariff item 68 as it stood before 28-2-1986. In order to appreciate the various contentions, it is

appropriate to reproduce broadly tariff item 15A which is as follows:-- (2) Articles of materials described in sub-item (1), the following, namely:-- It would, therefore, be observed that the scheme of tariff item 15A is as follows:-- sub-item (1) mentions certain artificial and synthetic resins and plastic materials.

sub-item (2) refers to certain specified articles made of materials mentioned in sub-item (1).

sub-item (3) mentions polyurethane foam and sub-item (4) mentions articles made of polyurethane foam.

The learned advocate for the assessee had inter alia contended that the scheme envisages that before an article can be treated as classifiable under sub-item (4), polyurethane foam must come into existence in the first instance and thereafter, article should be made out of such polyurethane foam. Since in the instant case, the product is directly moulded into the desired shape, no polyurethane foam comes into existence. Process of manufacture of foam is totally different from that of single shot injection moulding process employed in the instant case. The product should not be treated as falling under tariff sub-item (4). Though on the face of it, the argument looks attractive, but this by itself does not decide the issue particularly in an age of fast expanding technology. However, the learned advocate's other argument that the scope of tariff item 15A has been spelt out in Supreme Court's judgment in [1986] 8 ECC 53 (SC) : 1985 (22) ELT 3 (SC) mentioned above appears to be decisive in this case. In that case, the Supreme Court while considering the scope of sub-item (2) of tariff item 15A as it stood and extracted above is more or less on the same lines as of sub-item (4) here. There the Supreme Court was defining the scope of "articles made of plastics". Here, the scope of "articles made of polyurethane foam" is to be determined. It is, therefore, clear that the articles covered by sub-item (4) of tariff item 15A must necessarily be only made of polyurethane foam.

Even going by commercial parlance test which is a well settled principle of classification of products under a taxation tariff, the product in question is saddle or a seat for a scooter/motorcycle in the mind of the trader and the consumer as urged by the learned advocate.

It is not as an article of polyurethane foam which a consumer buys.

When a consumer buys this seat or saddle, he buys it because it performs a specific function for him. The judgments relied upon by the learned advocate, particularly [1987] 65 STC 41, are very appropriate in the instant case. The test of commercial parlance and how this test should be applied has been well set out in para. 8 of Supreme Court's judgment in the case of Atul Glass: relevant portion thereof has already been extracted above. It is the functional character of an article which identifies it in the mind of a person. The functional character of the product in the instant case as stressed by the learned advocate for the respondent is truly that of a seat/saddle in the instant case. The product as it emerges is a seat or saddle which can be straightaway fitted to scooter/ motorcycle. It does not require further processing as in the case of latex foam sponge seats in the case of Apex Rubber Ltd. mentioned supra. Taking the overall view of the facts and circumstances of this case and the scope of the tariff entry 15A(4), it is clear that the products saddles/seats manufactured in single shot injection moulding process by the assessee is classifiable under tariff item 68 as it stood before 28-2-1986.

(Although the impugned order had mentioned about the classification of other motor parts, it has been a common ground that the question to be decided here is only in respect of saddles/seats and not in respect of other parts which were not manufactured and cleared by the assessee during the relevant period.) 6. Accordingly, in view of our discussion and finding above, the appeals are dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com