Elgi Polytex Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-02-1988

Reported in : (1988)(18)ECC14

Appellant : Elgi Polytex Ltd.

Respondent : Collector of Central Excise

Judgement :
1. This appeal is directed against Order-in-Appeal dated 30-4-1987 passed by the Collector of Central Excise (Appeals), Madras, confirming the classification of a product called Rubber Cement or Black Vulcanising Cement manufactured by the appellants under Heading No.40.05 of the Schedule to the Central Excise Tariff Act, 1985 (GET, for short) as ordered by the Assistant Collector of Central Excise, Coimbatore, by his order dated 16-10-1986. Though the submissions as regards the heading of the tariff schedule under which the goods are to be classified have been put forth differently at different points of time, the facts, insofar as they are relevant for the determination of the proper classification, not being in dispute, the question of classification becomes essentially one of law and, therefore, the fact that different submissions were made before the lower authorities and now before us would not come in the way of the appellants urging before us now what, according to them, should be the correct classification.

2. The undisputed facts are that the appellants' product "rubber cement" or "black vulcanising cement", has the following chemical composition :- (a) Natural rubber 6.6/% (b) Sulphur 0.25% (c) Solvent 88.00% (d) Balance - consisting of carbon

5.08% black, stearic acid, zinc oxide, This was the classification declared in the revised classification list No. 151/85-86. While filing another classification list No. 6/86-87, the chemical composition was furnished thus :- (a) Rubber compound 11.00% (b) Soluble sulphur 0.30% (c) Resin 1.00% (d) S.B.P. Spirits 87.00% A notice was issued by the department on 7-4-1986 to the appellants asking them to show cause as to why classification list No. 151/85-86 should not be approved rejecting the classification claim under sub-heading No. 4017.00 of Heading No. 40.17, inasmuch as rubber cement was not an article of vulcanised rubber. After considering the submissions, both written and oral, the Assistant Collector classified the product under sub-heading 4005.00 of Heading No. 40.05. This order was upheld in appeal by the Collector (Appeals).

"Rubber is cut into small bits and then charged into a vessel fitted with horizontal blades for stirring. Along with this rubber, -solvent is added and stirred for six hours. The rubber compound dissolves in the solvent and forms a uniform solution. Thereafter this solution is -discharged into a 25 litre container and despatched. The solution is used for tyre retreading process." 4. Shri V. Sridharan, Advocate, represented the appellants during the hearing on 8-1-1988 and Shri V. Lakshmikumaran, Advocate, on 14-1-1988.

Smt. D. Saxena, Sr. D.R., represented the respondent Collector on both occasions.

5. Though Shri Sridharan had initially submitted that the process of manufacture followed by the appellants resulting in the subject product did not amount to a process of manufacture as contemplated in Section 2(f) of the Central Excises and Salt Act, and that, therefore, the product was not excisable. Shri Lakshmikumaran, on the second day of hearing, gave up this plea and stated that he would not be advancing any argument on the question whether the process amounted to manufacture. In view of this submission, we are not required and we are not going into this aspect of the matter.

6. The claim which was pressed before us was that the Heading No. 35.0) (sub-heading 3501.90) was appropriate prior to 10-2-1987 and Heading No. 35.06 (sub-heading 3506.90) on and after 10-2-1987 when the tariff was further amended. In

the event of this claim not being accepted, it was claimed that the product should be classified under Heading No.4015.90 prior to 10-2-1987 and the corresponding Heading No. 4016.19 on and after 10-2-1987.

7. It has been urged in the Memorandum of appeal that the department was aware that the appellants were being supplied with the raw material required for the production of rubber cement or black vulcanising cement by M/s. Elgi Tyres & Tread Ltd. (ETTL). In support of this contention a letter No. OC.1037/87, dated 29-4-1987 and Show Cause Notice No. OC.1177/87, dated 19-5-1987 have been cited. This averment has not been rebutted by the department before us. It is clear from these documents that the department was aware that the raw material was being supplied by ETTL to the appellants. The classification list filed by ETTL before the Central Excise authorities has been filed along with the memorandum of appeal. This list shows that the cement compound, the raw material for the subject product, has been classified by the Central Excise authorities under sub-heading 4008.29 of Heading No.40.08. The Sr. D.R. states that there is no knowing whether the classification of the raw material, namely, cement compound was correctly made or not, though she has not pointed out any basis for the doubt. On the other hand, Shri Lakshmikumaran points out that the classification of the cement compound cannot be called into question in these proceedings. In any event, the classification of raw material is not the subject of the dispute before us. The department has not chosen to assert that the classification was incorrect. We have, therefore, to proceed on the state of affairs as disclosed by the record, namely, that the cement compound was classified under Heading No. 40.08.

8. Heading No. 40.08 reads "Plates, blocks, sheets, strip, rods, and profile shapes, of vulcanized rubber other than hardened rubber". This would point to the position that cement compound was vulcanised rubber.

If this be so, Heading No. 40.05 reading "Compounded rubber, unvulcanised, in primary forms or in plates, sheets or strip" cannot, on the face of it, be the proper classification of the subject product.

This is because vulcanisation, according to the authoritative book "Encyclopedia of Chemical Technology" (Kirk Othrner) (Third Edition, Volume 20, page 445), is an irreversible process during which a rubber compound, through a change in its chemical structure, e.g.

cross-linking, becomes less plastic and more resistant to swelling by organic liquids. If, therefore, the cement compound from which rubber cement was produced was of vulcanised rubber, the resultant product cannot be of unvulcanised rubber and Heading No. ^0.05 is, therefore, to' be ruled out. However, it is the Sr. D.R's contention that vulcanised rubber, according to the book "Rubber Technology and Manufacture" edited by C.M. Blow and C. Hepburn, and published by Plastics and Rubber Institute by Butterworths (Second Edition), page 73, raw rubbers are completely soluble in certain liquids, but vulcanised rubbers are virtually insoluble. Strong bonds, such as chemical crosslinks between the rubber chains, prevent rubber molecules becoming completely . surrounded by the liquid and restrict the deformation of the rubber. The product obtained by the appellants from ETTL is admittedly soluble in S.B.P. spirits. This raises a doubt as to whether the rubber compound is indeed vulcanised rubber because if it is, it would not be readily soluble in solvents. But this circumstance need not detain us from proceeding to determine the appropriate classification of the subject rubber cement or black vulcanising cement. We shall, for this purpose, assume: that the choice has to be made between Headings No. 40.05 (as the department would have it) and the headings in Chapter 35 as urged by the appellants.

9. Sub-heading No. 3501.90 under Heading No. 35.01 reads "Albu-minoidal substances; modified starches; glues; enzymes, - other". The argument is that since the subject product acts as an adhesive (and there is no dispute about this) it is a glue. Glue and adhesive are synonymous terms in accordance with the Glossary appearing at pages 1 to 3 of Book "ADHESION AND BONDING" Edited by Norbert M. Bikales, published by WILEY-INTERSCIENCE. The tariff schedule as amended on 10-2-1987 has Heading No. 35.06. Sub-heading 3506.00 under this heading reads "Prepared glues and other prepared adhesives, not elsewhere specified or included". The claim for classification based on the above two headings seems to be well founded.

10. The book "Adhesion and Bonding" referred to above states at page 70 in the Chapter entitled "Adhesive compositions" that rubber based adhesives are the largest group of adhesive materials in terms of dollar value. The rubbers are used both as latexes and as solvent cements. Most rubber for adhesives is utilised in solvent-cement form.

The rubber is dissolved in the solvent by high speed mixers. Other ingredients may include tackifiers, resins, fillers, softeners, anti-oxidants, vulcanising agents and sequestering agents.

11. As noted at the outset the subject product contains, apart from rubber compound and solvent, sulphur, carbon black, stearic acid, zinc oxide, fillers and accessories. The product answers to the description of rubber based adhesives and is correctly classifiable as glue. The Explanatory Notes under the "Harmonized Commodity Description and Coding System" of the Customs Co-operation Council, Brussels, which description and system form the basis of the nomenclature in the schedule to the Central Excise Tariff Act, 1985, are of considerable help and persuasive value in this regard though they have no statutory force. The Schedule, as it existed till it was amended on 10-2-1987, had only one heading in Chapter 35 ("Albuminoidal Substances; Modified Starches; Glues; Enzymes") which tallied with the title of Chapter 35 of the Brussels Nomenclature (which is also the title of the Chapter 35 of the Schedule of the Central Excise Tariff Act, 1985). With the amendment on 10-2-1987, the description of the headings in Chapter 35 of the Brussels Nomenclature were almost wholly adopted (at the four digit level) and incorporated in the Central Excise Tariff Schedule.

The Heading 35.06 of the Brussels Nomenclature and Heading 35.06 of the Central Excise Tariff Schedule are reproduced below :- "35.06 Prepared glues and other prepared adhesives, not elsewhere specified or included; products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg.".

"35.06 Prepared glues and other prepared adhesives, not elsewhere specified or included".

Explanatory Notes under Heading No. 35.06 of the Brussels nomenclature show that the heading covers inter alia adhesives consisting of a mixture of rubber, organic solvent, fillers, vulcanising agents and resins. The notes under Heading No. 40.05 (corresponding to Heading No.40.05 of the Central Excise Tariff Schedule) show that prepared glues and other prepared adhesives consisting of rubber solutions or dispersions with added fillers, vulcanising agents and resins, and rubber solutions and dispersions put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg (Heading 35.06) are excluded from the said Heading 40.05. The clause regarding rubber solutions and dispersions put up for retail sale, not exceeding a net weight of 1 kg, has relevance only to the Brussels nomenclature because its Heading 35.06 (reproduced earlier) has a specific description to that effect. Whereas, as may be seen from Heading 35.06 of the CET (reproduced earlier), there is no corresponding description. The subject product, as seen from its composition, contains rubber in solution in an organic solvent, sulphur (a vulcanising agent), fillers and resin. Its use is admittedly as an adhesive- in retreading of tyres. There can, therefore, be no doubt that the correct classification of the product is as a prepared adhesive or glue in Chapter 35 of the Central Excise Tariff Schedule.

12. In the above view of the matter, it is not necessary to consider the alternative claim for classification under Heading No. 40.15.

13. In the result we allow the appeal, set aside the orders of the lower authorities and direct that the product "rubber cement" or "black vulcanising cement" manufactured by the appellants shall be classified under Heading No. 35.01 (sub-heading 3501.90) during the period prior to 10-2-1987 and under Heading No. 35.06 (sub-heading 3506.00) on and from 10-2-1987.