**Collector of Central Excise Vs. M.M. Rubber Co. Ltd.**

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**SooperKanoon Citation** : sooperkanoon.com/672

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

**Decided On :** Nov-18-1983

**Reported in** : (1984)(15)ELT198TriDel

**Appellant** : Collector of Central Excise

**Respondent** : M.M. Rubber Co. Ltd.

**Judgement** :

1. The question that falls for decision in this case is whether cushion seats for motor vehicles fell, during the period from 1-4-1976 to 31-3-1977, under item No. 16A (1) of the Central Excise Tariff which read as "Latex Foam Sponge" as tentatively held by the Govt. of India in their impugned show cause notice, or under item No. 34A of the Tariff which read as "Parts and accessories of motor vehicles, not otherwise specified", as urged by the respondents.

2. The facts, in brief, are that the respondents filed a classification list in which they described the subject goods as Latex Foam Sponge falling under item 16A(1). The classification declared by them was approved by the Department. Later on, the respondents filed a refund claim saying that the goods were more appropriately classifiable under item 34A. The Assistant Collector upheld the original classification under item 16A (1) and rejected their claim. The Appellate Collector decided the appeal in favour of the respondent. The Govt. of India, however, tentatively was of the view that the Appellate Collector's order was not correct and sought to revise the same by issuing the impugned show cause notice under the then section 36(2) of the Central Excises and Salt Act, 1944. The

proceedings initiated with this show cause notice have since been transferred to this Tribunal for disposal as the subject appeal by the Department.

3. The respondents stated at the outset that there was at present no directive from the High Court which stood in the way of disposal of the said appeal by this Tribunal. Coming to the merits of the case, they stated that the Asstt. Collector rejected their refund claim on two grounds- However, in the impugned show cause notice, the Govt. of India had not taken the ground of time-bar and, therefore, the matter to be decided by this Bench related to the basic issue of classification only. They stated that there was a mistake of fact in paragraph 2 of the impugned show cause notice inasmuch as it stated that the respondents manufactured latex foam sponge cut into shape for use in the manufacture of cushion seats for motor vehicles. The respondents stated that the subject cushion seats were directly moulded as such from latex and were not out of any bigger latex foam sponge piece. In regard to the basic issue of classification, they stated that their initial declaration in the classification list was a mistake but that they were not barred from claiming refund under rule 11 of the Central Excise Rules, 1944 on the ground of estoppel. They argued that the paramount test for central excise classification, as held by the Supreme Court in various judgments, was the commercial understanding in regard to the goods in dispute and that applying this test, since their subject goods were known as scooter seats, motorcycle seats, bus seats etc. item 34A of the Tariff was more specific for them. For this they relied on the Supreme Court judgment reported at AIR 1975 SC 1785 in which the Supreme Court held that the item relating to textile machinery was more specific for pot motors especially designed for spinning frames as against the item relating to electric motors in general. Developing this argument of special design, they stated that their cushion seats were specially designed for a specific use, they were manufactured to specific shapes on orders from motor vehicle manufacturers and there was no other use for them. They also relied on the orders of this Tribunal reported at 1983 ELT 161 in which it was held that quartz cell sets and glass cell sets which were highly matched and sophisticated spares and accessories of spectrophotometers and which had specialised optical functions to perform with spectrophotometers were correctly classifiable as parts and accessories of spectrophotometers and not under the general category of laboratory glassware.

They also relied on the Supreme Court judgment (1981 ELT 325) in which it was held that hypodermic clinical syringes could not, in popular or commercial parlance, be considered as glassware under entry No. 39 of the First Schedule to U.P. Sales Tax Act, 1948. They also referred to the Bombay High Court judgment reported at 1982 ELT 237 in which wind screens for motor vehicles were held to be motor vehicle parts rather than as glassware. Summing up, the respondents prayed that their cushion seats ought to be held as parts and accessories of motor vehicles. However, they also made an alternative plea for the first time saying that their subject cushion seats were articles made of latex foam sponge and were not latex foam sponge as such and that the Explanation added to item 16A(1) on 1-3-1983 to add articles made of latex foam sponge in the scope of that entry was not applicable retrospectively.

4. The Department's representative stated that the issue was whether latex foam sponge moulded to a particular shape ceased to be latex foam sponge. He argued that item 16A(1) "Latex Foam Sponge" was a very specific entry for all forms of latex foam sponge and that latex foam sponge moulded to a specific shape did not cease to be covered by it.

Secondly, as stated in the impungned show cause notice itself, the respondents were clearing the subject cushion seats in naked form, i.e., without any rexin or leather covering and without any metal plate or strip at the base for fastening the seat to the body of the motor vehicle. In this naked form, the goods were not identifiable or marketable as motor vehicle parts and accessories. In that form, they were only intermediate goods for use in the manufacture of parts and accessories of motor vehicles. Thirdly, item was an 'N.O.S.' item and goods specifically covered under another item of the Tariff, 16A(1) in this case, could not be classified under item 34A. He stated that the Appellate Collector had apparently been swayed by the Board's Order in Appeal in another case which he thought was an order by the Govt. of India. Actually it was only an Order-in-Appeal passed by the Central Board of Excise & Customs and it was taken up by the Govt. of India for revision. Further, the Appellate Collector had gone on the basis of end use of the subject cushion seats. The Department's representative relied on the Supreme Court judgment reported at 1983 ELT 1566 (Dunlop India Ltd.) to say

that end use of a product was not material for deciding the question of its classification unless the relevant tariff entry itself so manipulated. There was no requirement as to end use in entry 16A(1). He distinguished the case law relied on by the respondents in regard to quartz cell sets and glass cell sets, hypodermic syringes, wind screens and pot motors saying that all those authorities dealt with articles which were in finished form while the respondent's cushion seats cleared in naked form were unfinished articles and were not recognizable as motor vehicle parts. He relied on this Tribunal's order in which it was held that bolts and nuts specially designed for use on motor vehicles and even having specific part numbers were classifiable under item 52 of the Central Excise Tariff which related to Bolts & Nuts and not as unspecified motor vehicle parts under item 68 (goods not elsewhere specified) of the Tariff. He summed up his case saying that the subject cushion seats were only latex foam sponge moulded to a particular shape and without any covering or metal strip etc. and hence classifiable under the specific entry 16A(1). He added that the Explanation inserted in item 16A(1) on 1-3-1983 was only declaratory in nature and the original entry "Latex Foam Sponge" itself was quite appropriate and specific for the goods.

5. We have carefully considered the matter. A part or accessory of a motor vehicle is one which is ready for fitment to the motor vehicle either as original equipment or as replacement. This is the popular or common understanding of the concept of machinery parts or spare parts.

No customer of a part or accessory for his motorcycle or scooter would like to buy an unfinished article which cannot straightaway be used by him for fitment. Cushion seats cleared by the appellants in unfinished or naked form cannot be called a part or accessory of a motor vehicle.

No doubt, they are purchased by manufacturers of motor vehicles. But the point is that those manufacturers cannot and do not use the naked seats as such. They have to carry on further manufacturing operations thereon like stitching the leather or rexin cover before the seats become ready for fitment to the motor vehicle. We, therefore, hold that the subject cushion seats, in the form they are cleared from the respondent's factory, do not merit classification under item 34A of the tariff. The

argument that the seats were specially designed for a specific use ultimately cannot decide classification of the unfinished seats at the time of clearance. All the authorities cited by the respondents relate to cases of finished articles which could straightaway be fitted to the appliance or machinery and they do not, therefore, advance the respondents' case for classification of the subject goods as parts and accessories of motor vehicles.

6. The only question that remains to be decided by us is whether the subject seats could be classified as "Latex foam sponge" under item 16A(1). The respondents had been declaring their latex foam sponge pillows, cavity sheeting, chair cushions, cinema seats, scooter seats, bus seats etc. under the broad description "Latex Foam Sponge Brand 'M.M. Foam' ". There has, therefore, never been any doubt that all these articles were only different varieties of latex foam sponge and the entry 16A(1) covered them specifically. We were informed by the respondents that their subject seats are moulded as such from latex and are not cut from any bigger piece of latex foam sponge. The Explanation added to item 16A(1) on 1-3-1983 to include thereunder "articles made of latex foam sponge" is, therefore, hardly relevant for classification of the subject seats. We hold that the original entry "Latex foam sponge" covered latex foam sponge in all its forms and varieties and hence the subject seats too were covered by it.

7. Accordingly, we allow this appeal of the Department. The order passed by the Appellate Collector is set aside and the order of the Asstt. Collector is restored.