

Collector of Central Excise Vs. India Coffee and Tea Distributing

Collector of Central Excise Vs. India Coffee and Tea Distributing

SooperKanoon Citation : sooperkanoon.com/8135

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-12-1995

Reported in : (1995)(58)LC67Tri(Mum.)bai

Judge : G Agarwal, K T P.K.

Appellant : Collector of Central Excise

Respondent : India Coffee and Tea Distributing

Judgement :

1. The facts of the case in brief are that the respondents are engaged in the manufacture of pillion seats for scooters, Auto Rickshaw driver/passenger seats, tractor seats, and seats for jeep etc. These products were classified as "Latex Foam Sponge" falling under Item 16-A(1) of the Central Excise Tariff by the Assistant Collector of Central Excise. Being aggrieved by the order passed by the Assistant Collector the respondents filed an appeal before the Collector of Central Excise (Appeals), Bombay seeking the classification of the disputed goods under Item 34-A of the Central Excise Tariff. The Appellate Collector of Central Excise, Bombay vide his order dated 20.12.1976 held that the appeal would lie to the Central Board of Excise & Customs in view of the earlier order passed by the Collector of Central Excise on 10.3.1976 and advised the respondents to obtain an appealable order from the Collector. The respondents thereafter approached the Collector for passing the appealable order. The Collector of Central Excise, Bombay vide his order dated 29.8.1977 held that the products in question were classifiable under Item 16-A(1) and not under Item 34-A of the Central Excise

Tariff as contended by the respondents.

2. Being aggrieved by the order passed by the Collector of Central Excise, Bombay the respondents filed an appeal before the Central Board of Excise and Customs, New Delhi and pleaded inter alia that Tariff Item 16-A covers only "Latex Sponge" and not articles made therefrom.

The Central Board Excise & Customs vide its order dated 16th July, 1980 reversed the findings of the Collector and held that the goods in question were more appropriately classifiable as parts and accessories of motor vehicles under Item 34-A of the Central Excise Tariff. In exercise of powers under Section 36(2) of the Central Excises & Salt Act, 1944 the Government of India issued a notice to the respondents seeking to review the order passed by the Central Board of Excise & Customs and the said Show Cause Notice on transfer to the Tribunal in terms of Section 35-P of the Central Excises & Salt Act, 1944 is the present appeal before us.

3. On behalf of the revenue Shri Mohan Lal, Ld. JDR submitted that the question whether Latex Foam Sponge Cushion seats were classifiable under Tariff Item 16-A(1) or as parts and accessories of motor vehicle under Tariff Item 34-A was examined by the Tribunal in the case of Collector of Central Excise, Madras v. MM. Rubber Co., Madras and it was held that the said goods were correctly classifiable under Tariff Item 16-A(1). He added that in the case of Collector of Central Excise, Madras v. Apex Rubber (P) Ltd. the Tribunal had once again held that Latex Foam Sponge in the form of Bus/Scooter seats were classifiable under Item 16-A(1) of the Central Excise Tariff and not under Item 34-A of the CET. He pleaded that the matter having been settled in favour of the department the appeal may be allowed.

4. On behalf of the respondents Shri A.K. Haksar, Ld. Sr. Advocate appeared before us. He produced a sample of "Latex Foam Sponge Scooter seat". He contended that even without the rexin or leather covering it had to be deemed as motor vehicle part classifiable under Tariff Item 34-A since even the Supreme Court has held in the case of Mehra Brothers v. Jt. Commercial Officer that the car seat covers are only accessories for comfortable use of the vehicle or for adding

elegance to the seat.

5. We have examined the records of the case and considered the submissions made on behalf of both sides. In this case the question that arises for consideration is whether motor vehicle seats of 'Latex Foam Sponge' without covers are classifiable under Item 16-A(1) of the Central Excise Tariff as "Latex Foam Sponge" or under Item 34-A of the Central Excise Tariff as "motor vehicle parts." It is seen that in the case of Collector of Central Excise, Madras v. M.M. Rubber Co., Madras the Tribunal Sponge Cushion seats without cover are classifiable under Tariff Item 16-A(1) and not as motor vehicle part or accessories under Tariff Item 34-A of the Central Excise Tariff. In the case of Collector of Central Excise, Madras v. Apex Rubber (P) Ltd. the Tribunal had once again held that Latex Foam Sponge in the form of bus/scooter seats etc., was classifiable under Tariff Item 68 (All other goods not elsewhere specified). Paras 7 to 10, 15 & 16 being relevant are reproduced below: 7. It was vehemently urged that the ratio of the Supreme Court decision in the case of A/A. Atul Glass 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 Tariff Item 23A(4) and Item 68 in the case of glass mirrors and 23A(4), 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 averted 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 glassware for, glassware

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-CE, dated 29.5.1971 as amended. The Finance Bill of 1979 restricted the scope of the entry 34A to 15 items. Parts and accessories of motor vehicles and tractors falling under Tariff Item 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 Tariff Item 68 as the item has not been mentioned under Tariff Item 34A as amended. The ratio of that ruling will not apply to the present facts.

15. In the case of Atul Glass Industries 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 GET, 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. *Mehra Bros. v. Jt.*

Commercial Officer (supra) cited by the Ld. Counsel for the appellants cannot be of any assistance to them since seat covers which were held as accessories in the said judgment are in the nature of additional decorative or protective coverings for automobile seats supplied as original fittings by the manufacturers of the vehicles. In view of the foregoing we follow the Tribunal's decisions quoted above and hold that the Latex Foam Sponge Cushion seats without leather or rexin cover were correctly classifiable under Item 16-A(1) of the Central Excise Tariff.

7. Accordingly, we allow the appeal of the department and set aside the impugned order passed by the Central Board of Excise & Customs, New Delhi.

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