

Supreme Engineering Works Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-22-1996

Reported in : (1996)(86)ELT306TriDel

Appellant : Supreme Engineering Works

Respondent : Collector of Central Excise

Judgement :

1. This appeal is directed against the Order-in-Appeal No. P-38/90, dated 26-11-1990 of Collector (Appeals).

2. The issue relates to classification of rubber shields and Tank Fuel/Flexible Fuel Bag Tank to be used as inner lining of the fuel tanks.

3. Arguing for the appellants Ld. Consultant submits that in the first place, even though Assistant Collector has confirmed the demand for 6 months only even this demand cannot be sustained for the reasons that since this demand alleging suppression was issued by Assistant Collector and not Collector, the entire order is vitiated.

Subsequently, however, the Ld. Consultant fairly conceded that in view of the Apex Court judgment in the case of Safari Industries reported in 1993 (64) E.L.T. 197 he does not press this plea.

4. Arguing on the merits of the case he submits that authorities below have held the goods as classifiable under Heading 4016 as against 4008 as claimed by

them. Before elaborating further in regard to the applicability of Heading 4008 he submits that he would first like to exclude Tariff [Heading] 4016 as held applicable by the authorities below. Heading 4016 relates to other articles of vulcanised rubber other than hardened rubber and to fall in entry under 4016.19, the articles must be made of articles of materials falling under Heading 40.08. It come on record either in the Order of Assistant Collector or Deputy Collector that these items are classifiable under Heading 4016 and are made of articles of materials of Heading 40.08., 4016.19 refers only to such other articles as would fall under articles of materials of Heading 4008. Since there is no finding on this basic issue classifying articles by excluding 4008, under 4019, would on the face of it vitiate the order. In their case even assuming that these are not profile shape the unvulcanised rubber is given a provisional shape after which it is steam vulcanised. In other words, the rubber in unvulcanised form has already assumed a particular shape in the form of lining of fuel tank and it is only thereafter it has been subjected to vulcanisation. The articles as such, therefore, cannot be considered to have been made out of materials under Heading 4008, since that entry refers to articles of vulcanised rubber. Here the shape of inner lining or the air bag has come from the unvulcanised rubber. In this view of matter, therefore, it cannot be considered that the impugned goods are made out of articles of materials under Heading 4008. Even admitting while denying, that impugned articles would not fall under 4008, at this stage, however, the Ld. Consultant fairly concedes that in deciding classification of such products as between the two competing entries, 4008 and 4016, problem has basically crept in because of introduction of the 'heading' "articles of materials of Heading 40.08" immediately under the Heading 4016 and above sub-heading 4016.11. In Customs Tariff for instance such a heading above the sub-heading has not been adopted. Even in HSN such a heading is missing. He, therefore, submits that even while Heading 4008 could be excluded, Heading 4016 also cannot be included to cover these items. At one stage the Ld.

Consultant pressed his claim for classification of the impugned goods tinder Chapter 87 as parts of the tanks. Subsequently however he withdrew the same. He submits that even while Collector (Appeals) while discussing manufacturing process has used the word 'provisional shape' of the article, the article as such

after vulcanising has not been further worked. He, however, fairly concedes that since the basic argument which he is pressing for excluding the classification under Heading 4016 relates to manufacture of the impugned goods from the materials of Heading 4008, and since Collector (Appeals) has not fully described the manufacturing process while Assistant Collector has not at all referred to such process, and since the arguments adduced by him are basically in the context of manufacturing process, the matter could be remanded to the authorities below for determining classification in the light of actual manufacturing process.

5. Ld. DR submits that these impugned goods are made of articles under Heading 4008 and while Collector (Appeals) has referred to rubber bags he has not given any findings on the shields. Ld. DR, however, reiterated the Department's arguments.

6. We have heard both sides. For the sake of clarity we are extracting below two competing Entries: 40.08 and 40.16 : "40.08 Plates, blocks, sheets, strips, rods, and profile shapes, of vulcanised rubber other than hard rubber." 7. Admittedly, plates, blocks, sheets, strip, rods are classifiable under Heading 4008. The only item left under this Tariff entry is Profile shape. In Chapter Note 9 Profile Shapes apply only to such products whether or not cut to length but not otherwise worked.

Collector (Appeals) has relied on HSN Notes to rule out these items being in the nature of profile shape. We find that Assistant Collector while deciding this issue has not at all referred to the process of manufacture. While Collector (Appeals) has briefly referred to process he has also not gone into details as to whether or not after giving provisional shape to the items any finishing touches have been given to it to indicate whether or not it has been further worked. In order, therefore, to consider which of the competing entry would be more appropriate it would be necessary to know various stages of manufacture to find out whether the impugned goods are made of the articles of materials under Heading 4008 or whether there are actually profile shapes. We, therefore, set aside the impugned order and remand the matter to the original jurisdictional authority for determination of classification in the light of manufacturing process, and the nature of the product, through de novo decision after observing principle of natural justice.

The appellants would be at liberty to produce such evidence as they consider necessary in support of their case.

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