

M.M. Rubber Co. Ltd.

Vs

Collector of Central Excise Madras

Civil Appeals Nos. 7057-58 of 1993 with No. 5813 of 1995

(S. Saghir Ahmadi, KS. B. Bharucha JJ)

01.08.1996

ORDER

1. It is not necessary to go into the history of the proceedings that led to the order of the Customs, Excise and Gold (Control) Appellate Tribunal which is under appeal. It is sufficient to say that the Tribunal upheld the classification of pillion seats for scooters, driver and passenger seats for autorickshaws and seats for tractors and jeeps as "latex foam sponge" falling under Item 16-1A(i) of the Central Excise Tariff and rejected the contention of the appellants that the seats should be classified under Item 34-A.

2. Item 16-A(i), at the relevant time, read thus :

"16-A. Rubber products, the following, namely :

(i) Latex foam sponge 60% ad valorem"##

With effect from 1-3-1982, an explanation was introduced in Item 16-A(i) to include articles made of latex foam sponge. Tariff Item 34-A reads thus :

#"34-A. Parts and accessories of 20 per cent ad valorem. motor vehicles not otherwise specified##

Explanation. - The expression 'Motor vehicles' has the meaning assigned to it in Item 34."

3. The Tribunal, in the order under appeal, found that there was no transformation of the liquid froth foam sponge. It merely took the shape of the mould into which it was poured. Referring to the judgment of this Court in *Atul Glass Industries (P) Ltd. v. CCE* [(1986) 2 SCC 480 : 1986 SCC (Tax) 620] the Tribunal stated that the functional aspect referred to therein had no significance in the case before it because the functional use of a mirror was totally different from the functional use of glass (which was the subject-matter of the case of *Atul Glass Industries* [(1986) 2 SCC 480 : 1986 SCC (Tax) 620]). In the instant case, although the latex foam sponge had acquired the shape of a seat, it had not, unlike in the case of the glass mirror, undergone such a complete or considerable transformation that the moulded product no longer was identifiable as latex foam sponge. It continued to be sponge moulded into a particular, desired shape. Further, there was no item more specific than "latex foam sponge" to cover the moulded goods. Emphasis was also laid upon the fact that the seats had not been fabricated from out of bigger pieces of sponge.

4. In the memorandum of appeal, the appellants have set out the method of production of the seats in question thus :

"(a) Compounding : The raw material used in the manufacture of the appellants' products are principally natural rubber latex, zinc oxide, various accelerators, antioxidants and stabilisers. However, in the case of different seats, the formulations used are slightly different depending on the required specifications of the finished products. Raw material compounded for one type of seat, e.g., scooter pillion seat does not produce optimum results if used in manufacture of tractor seats. Therefore, for the manufacture of each type of automobile seat, different formulations need to be used and these formulations in turn are different from the formulations used in the manufacture of latex foam mattresses and other sheets.

(b) Foaming : The compounded raw material is mechanically foamed and then poured into the moulds. These moulds are prepared to special design from drawings supplied by the ordering automobile-manufacturing company.

(c) Vulcanising : The moulds are then placed in a steam chamber and the seats vulcanised. The vulcanised seats are then removed from the mould, washed, dried and inspected. If the finished products are rejected by the automobile-manufacturing company, the material is generally scrapped; it is not useful for any other purpose and the replacement market for such seats is virtually non-existent because the life of the seats is normally longer than the life of the automobile."

Counsel who appeared for the appellants before the Tribunal stated that this material was made available to the Tribunal and was relied upon before it.

5. Mr Hegde, learned counsel for the appellant, cited the judgment of this Court in *Mehra Bros. v. Jt. Commercial Officer, Madras* [(1991) 1 SCC 514]. The matter concerned the classification of automobile seat covers and the entry that was held to be applicable read thus :

"Motor Vehicles, Motor Cars, Motor Taxi Cars ... all articles (excluding batteries) adapted for use generally as parts and accessories of motor vehicles."

The argument proceeded principally upon the question of what was an accessory, and it was held that car seat covers were accessories, being an addition, adjunct, or accompaniment for comfortable use of the car or for adding elegance to the seats. Mr Hegde submitted that if such seat covers were accessories, the seats themselves were part of the vehicle. Reference was made by Mr Hegde to a Trade Notice on the subject of classification of seats for motor vehicles. It was there clarified that bare seats of the kind used in motor vehicles, except two-wheelers, merited classification under the heading in the new Tariff that pertained to seats and these used in two-wheelers under the heading that related to two-wheelers.

6. Learned counsel for the Revenue submitted that the classification which found favour with the Tribunal ought not to be disturbed. He placed emphasis upon the fact that subsequent to 1-3-1982, Tariff Item 16-A(i) had been amended to include articles made of latex foam sponge and he submitted that the seats in question, even if they were not latex foam sponge, were articles made of latex foam sponge and, therefore, subsequent to 1-3-1982, merited classification under Tariff Item 16-A(i). In this behalf learned counsel pointed out that Tariff Item 34-A spoke of parts and

accessories of motor vehicles not otherwise specified. Articles of latex foam sponge having been specified, the seats would, he argued, no longer fall within the ambit of Tariff Item 34-A.

7. Insofar as the period prior to 1-3-1982 is concerned, we are of the view that the Tribunal erred in its reasoning. The seats were specifically moulded latex foam sponge for use in given vehicles. They could be used only for the purpose for which they were made, for particular scooters, autorickshaws, tractors and jeeps, and this functional aspect was of significance. The seats having been moulded for use as parts of these motor vehicles, the entry that more specifically applied was Tariff Item 34-A.

8. Subsequent to 1-3-1982, (sic) became the amended Tariff Item 16-A(i) included articles made of latex foam sponge, and that, as would appear from the record before us, was the entry that more specifically applied.

9. In the result, Civil Appeal No. 5813 of 1995 (which covers the period 9-7-1975 to 28-2-1982) is allowed; the order of the Tribunal is set aside and such refund as is requisite shall be made, subject to the provisions of the relevant statute. Civil Appeals Nos. 7057-58 of 1993, insofar as it concerns the period prior to 1-3-1982, is allowed in the same manner. Insofar as it relates to the period after 1-3-1982, the appeal is dismissed and the order of the Tribunal is upheld.

10. There shall be no order as to costs.