SUPREME COURT OF INDIA

M/S Speedway Rubber Co.

Vs.

Commissioner, Central Excise, Chandigarh

C.A.No.4844-4846 of 1999

(S. Rajendra Babu and Ruma Pal JJ.)

07.05.2002

JUDGMENT

Rajendra Babu, J.

1. This is a statutory appeal by the appellants under Section 35L(a) and (b) of the *Central Excises Salt Act, 1944*, against the judgment and order of the Custom, Excise and Gold (Control) Appellate Tribunal [hereinafter referred to as 'the Tribunal'] dated 30.12.1998. The dispute is over classification of the impugned goods under the Central Excise Tariff Act, 1985 [hereinafter referred to as 'the Act'], and determination of the rate of duty payable on the goods manufactured by the appellants. The duty demand is for the period between July 1989 to December 1989 prior to the 1990 budget. The stand of the Department is that the impugned goods are classifiable under sub-heading 4016.99, prior to the 1990 budget. After the 1990 budget, they are classified under sub-heading 4008.21. The contention of the appellants is that the impugned goods were classifiable under sub-heading 4008.21 before the 1990 budget and even thereafter. The impugned goods were cleared under sub-heading 4008.21 of the Act as per the approved classification under Rule 173B of the Central Excise Rules, 1944. In Classification List No.35/89-90 dated 7.4.1989, impugned goods were claimed under sub-heading 4008.21, and were fully exempted from the excise duty vide notification No.47/76 of the Central Excise dated 9.3.1976. This Classification List was duly approved without modification by the Assistant Collector, Central Excise, Jalandhar, by order dated 28.12.1989. While the original Classification List No.35/89-90 was pending, on account of the change of rate of duty qua ADV tyres, [14% ADV instead of specific rate of duty of Rs.42 per tyre], the appellants submitted another Classification List No.173/89-90 on 6.11.1989. The Department chose to approve the original Classification List No.35/89-90 without any modifications. The original list was neither reviewed nor revoked. Subsequently, the Superintendent, Central Excise, Range II, Jalandhar, on 2.2.90 vide show cause notice issued under C.No.CE- 20/Demand/R.II/98/139, demanded duty of Rs.5,57,300.99 for the period between July 1989 and December 1989 by classifying the goods under sub-heading 4016.99 of the Act. On 30.3.1990, another show cause notice was issued under C.No.V-40(30) 12/Val/86/3566-67, by the Assistant Collector, Central Excise, Jalandhar, and the classification of the impugned goods in Classification List No.173/89-90 was objected to, on

the ground that Classification List No.173/89-90 was effective retrospectively with effect from 1.4.1989. In addition, another show cause notice dated 5.4.90 was issued under C.No.V-40(30)II/Val/96/3712-13, by the Assistant Collector, Central Excise, Jalandhar. The Classification List filed by the appellants effective from 22.9.1989 was also objected. It is pertinent to mention that show cause notice for demand of duty was issued on 2.2.1990, whereas Classification List No.173/89-90 was objected on 30.3.1990. The demand of duty was objected to on the following grounds: 1. It was without objecting to or in revocation of the original Classification List. 2. The period from July 1989 to 5.11.1989 was covered by the Original Classification List, which was duly approved by the Department. 3. Classification List No.173/89-90 filed on 6.11.1989 could not be effective retrospectively with effect from 1.4.1989. It could only be effective with effect from 6.11.1989. 4. Demand for the above period was in contravention of Classification List No.35/89-90 which was duly approved on 30.12.1989. 5. Clearance during the period 6.11.1989 to 12/1989 was covered by Classification List No.173/89-90. Therefore, the observations in this show cause notice dated 30.3.1990 with respect to Classification List No.173/89-90 are contended to be factually incorrect. The appellants filed on 25.5.1990 an interim reply to the show cause notice dated 5.4.1990 and submitted that it has been reversing the credit of duty taken against inputs used in the manufacture of subject goods in view of Rule 57C of the Central Excise Rules, 1944. It further stated that if the Department holds that the subject goods are dutiable then there is no bar of rule. In this view of the matter they were entitled to avail the credit of duty against the manufacture of the impugned goods. The appellants had reversed a sum of BED Rs.11,61,951.29, SEB Rs.8,097.54 in the RG 23 A Part II Register, and requested that this credit may be allowed.

2. The Assistant Collector, Central Excise, Jalandhar vide order-in- original No.55-57/AC/Demand/Val/90 dated 31.7.1990 issued C.No.V- 30(5)D/90/9672 dated 4.9.1990 holding that: I confirm the demand for Rs.5,57,300.99 under Section 11A of the Central Excises and Salt Act, 1944. Classification List Nos.173/89-90 and No.163/89-90 effective from 1.4.1989 and 22.9.1989 filed by the appellants, both of which stand approved accordingly classifying the impugned goods under sub-heading 4016.99 of the 1985 Act and consequently exemption under notification No.47/76 dated 9.3.1976 is denied. Being aggrieved by the order of the Assistant Collector, the appellants filed appeals with the Collector [Appeals], Central Excise, Chandigarh. The Collector, vide order-in-appeal No.372-374/CE/Chd/91 dated 13.3.1991, set aside order of the Assistant Collector and ordered classification of impugned goods under sub-heading 4008.21. The Department then filed appeals to the Tribunal. The Tribunal, by majority opinion, allowed all the three appeals filed by the Department, and upheld the order of the Assistant Collector classifying the impugned goods under sub-heading 4016.99. Therefore, this appeal has been filed against the impugned order of the Tribunal. The nature of the goods manufactured by the appellants is crucial in determining the sub-heading under which they would be classified. The appellants have indicated four stages of their production as under: 1. Natural/synthetic rubber is mixed with certain chemicals including black carbon with the help of a mixing mill. 2. The material so obtained is fed into extruder hopper. Extruder dye is of the required size and shape. 3. Extruder material is taken to water tank for cooling and over conveyor belt. 4. The extruded material is placed in dye and is pressed with the help of hydraulic press and what emerges

out is vulcanized grooved material called procured tread. Heading 40.08 reads as Plates, Blocks, Sheets, Strips, Rods, and profile shapes of vulcanized rubber other than hard rubber and sub- heading 4008.21 reads as Plates, Sheets, and Strips for resoling or repairing or retreading rubber tyres. On the other hand, Heading 40.16 reads as Other articles of vulcanized rubber other than hard rubber and sub-heading 4016.99 again states other. Note 9 of Chapter 40 before its amendment in 1990 states :- In heading Nos. 40.01, 40.02, 40.03, 40.05 and 40.08, the expressions 'plates', 'sheets', and 'strips' apply only to plates, sheets and stripes and to blocks of regular geometric shape, whether or not having the character of articles and whether or not printed or otherwise surface-worked, but not otherwise cut to shape or further worked. In heading No. 40.08, the expressions 'rods', 'profile shapes' apply only to such products, whether or not cut to length or surface- worked but not otherwise worked. Under Finance Act of 1990, Chapter 40 Note 9 was changed as under : In heading Nos. 40.01, 40.02, 40.03, 40.05 and 40.08, except as otherwise provided, the expressions 'plates', 'sheets', and 'strips' apply only to plates, sheets and strip and to blocks of regular geometric shape, uncut or simply cut to rectangular (including square) shape, whether or not having the character of articles and whether or not printed or otherwise surface worked, but not otherwise cut to shape or further worked. Moreover, explanatory notes to Harmonised Commodity Description and Coding Systems at page 579, states : 'plates, sheets and strips (heading Nos.40.01, 40.02, 40.03, 40.05 and 40.08) of Chapter 40 are to be read as follows : These expressions are defined in note 9 to this chapter and include blocks of regular geometric shape. Plates, sheets and strips may be surface worked (printed, embossed, grooved, channeled, ribbed, etc.) or simply cut to rectangular (including square) shape, whether or not having the character of articles, but may not be otherwise cut to shape or further worked. Therefore, the question that arises for consideration is whether the appellant manufacturer's process of placing the plates, sheets and strips in the dye and subjecting the same to pressing in the hydraulic press is in the nature of 'further working'. The appellants contended that the amendment was effective only from 31.05.1990 and, therefore, the same could not be extended to the classification list filed by them prior to that date. The amendment was merely clarificatory in nature and it neither restricted nor enlarged the scope of heading No. 40.08 or 40.16. Hence, the primary issue for consideration is the interpretation and application of Note 9 of Chapter 40 before its amendment in 1990. A plain reading of Note 9 before its amendment would show that what is covered are plates, sheets and strips which are of regular geometric shape, whether uncut or cut to rectangular shapes, whether printed or surface worked but not otherwise cut to shape or further worked. To determine the nature of the impugned goods, the difference between surface worked and further worked is significant. 'Surface working' means working on the surface of the material. 'Surface working' may include coating, polishing, colouring, embossing, corrugating or even grooving when such grooving is only on the surface of the material.

3. The Department contended that though at the initial stage the goods manufactured by the respondents emerged in the form of plates, sheets or strips, thereafter they are moulded, when their edges are rounded off and the shape of the cross section becomes an trapezoid. As a result, the final products do not remain plates/sheets/strips as defined under Note 9 of Chapter 40, since they are further processed and hence, cannot be classified under sub-heading 4008.21. The classification under sub-heading 4016.99 as other articles of

vulcanised rubber was more appropriate and, therefore, the exemption Notification No. 47/76, as amended, was not applicable to the appellants. The two members of a Bench of the Tribunal having difference in their view the matter was referred to the Third Member. The majority view of the Tribunal held that the basic character of the goods changed when they were subjected to the process of dye and grooving by hydraulic press. In their opinion, even after the emergence of plates, sheets or strips after extrusion, the material had to undergo the hydraulic press stage to become the plates, sheets and strips meant for resoling, repairing or retreading under the sub-heading No. 4008.21. This process fell within the meaning of further worked and, therefore, the impugned products could not be classified under sub-heading No. 4008.21 as held by the Collector. The minority opinion held that the types of processes or activities, which lead to 'surface working' were illustrated and indicated in the bracket after the words 'surface worked'. This meant that further working would constitute some process or activity, which is to be undertaken after surface working. As the manufacturing process claimed by the appellants had neither been contradicted nor shown to be wrong, it was held that the impugned goods were only 'surface worked' and 'further worked' and could, therefore, be classified under sub-heading No. 4008.21. We may notice that as per Rule 3(a) of the Interpretation Rules to Central Excise Tariff Act, 1985, The heading which provides the most specific description shall be preferred to headings providing a more general description. Accordingly, the heading No. 40.08 provides more specific description to the impugned goods than heading No. 40.16 and hence, the specific entry should overrule the general entry. Moreover, the manufacturing process involved 'surface working' of the types described above and does not include 'further working'. This is evident from the interpretation of Note 9 of Chapter 40, that further working would envisage an activity other than those mentioned therein. Hence, on the basis of the aforesaid discussion, the impugned goods would be classified under sub-heading 4008.21 and not under sub-heading 4016.99 as claimed by the Department. Thus, these appeals stand allowed by setting aside the order of the Tribunal and restoring that of the Collector.