SUPREME COURT OF INDIA

Commissioner of Central Excise, Cochin

Vs.

Apollo Tyres Limited

C.A.Nos.3394-3395 of 2000

(DR. AR. Lakshmanan and S. N. Variava JJ.)

05.05.2005

ORDER

1. These Appeals are against the Judgment of the Customs, Excise and Gold (Control) Appellate Tribunal (in short "CEGAT") dated 22nd September, 1999.

2. Briefly stated the facts are as follows:-

> "The Respondents are manufacturers of tyres. In the process of manufacturing tyre they purchase stainless steel wires. These wires are then cut into sizes. In the process of cutting the wire some scrap arises. This scrap is sold by the Respondents admittedly as scrap of wire."

3. The Respondents then use the cut wire for the manufacture of rubberised bead wire. In the manufacture of such rubberised bead wire there is again some waste. That rubberised bead wire waste is also sold. The rubberised bead wire which is not waste is then used in the manufacture of tyre. However, when it is found that a tyre is defective that defective tyre is cut up to make it unusable. In the process of making a tyre unusable, the Respondents cut the edge of the tyre and remove the rubberised bead wiring which is then sold as scrap.

4. The question which arises for consideration is whether the scrap of rubberised bead wire obtained at the process of manufacture of the rubberized bead wire and the bead wire rings which are removed from defective tyres are to be classified under Tariff Item No. 4004 or 7204.90.

5. Two show cause notices had been issued to the Respondents on 5th December, 1991 and 20th April, 1992. Thereafter by orders dated 18th November, 1992 and 19th November, 1992 the Assistant Collector dropped the proceedings on the footing that the Respondents had correctly classified these items under Tariff Item No. 4004.

6. The Commissioner of Central Excise exercising powers under Section 35E(2) of the *Central Excises and Salt Act, 1944* by his order dated 12th March, 1993 directed the

filing of an Appeal. In his opinion these two products were classifiable under Tariff Item No. 7204.90.

7. Thus, an Appeal was filed before the Collector (Appeals). The Collector (Appeals) by his order dated 28th May, 1993 considered all aspects in detail. He went into the composition of these two items and found that they were nothing but stainless steel wire with a coating of rubber. It was found that metal predominates in weight and that its essential characteristic was metal. The Collector (Appeals) therefore held that the correct classification should be under 72.07.

8. The Respondents went in Appeal to CEGAT. CEGAT has by the impugned Judgment held that these products were to be classifiable under Tariff Item No. 4004. CEGAT has so held without at all considering the composition of the products. CEGAT has so held only on the basis of Chapter Note 6 to Chapter 40 which reads as follows :-

> "For the purposes of Heading No. 40.04, the expression "waste, parings and scrap" means rubber waste, parings and scrap from the manufacture or working of rubber and rubber goods definitely not usable as such because of cutting up, wear or other reasons."

9. CEGAT has also relied upon Note 6 to Section XV which reads as follows:-

> "In this Section, the following expressions have the meanings hereby assigned to them:
>
> (a) Waste and Scrap : Metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons."

10. We have heard the parties at great length. In our view CEGAT has completely misdirected itself. It is to be seen that the product to start with is admittedly a stainless steel wire. In fact at the initial stage when it is cut and waste arises that waste is sold as scrap of stainless steel wire. Thereafter all that happens is that the stainless steel wire gets coated with rubber. Merely because it is coated with rubber does not mean that it loses its characteristic of stainless steel wire. The main item remains a stainless steel wire. When in the process of coating, some waste arises and that waste is sold, that waste would fall under Tariff Item No. 7204.90 by virtue of the fact that it is the waste predominantly of metal. Also this waste arises whilst mechanically working on metal and rubberising it. Thus, Note 6 of Section XV would make this a waste and scrap of metal. Chapter Note 6 to Chapter 40 would have no application at all. Chapter Note 6 to Chapter 40 specifically provides that the waste and scrap must be rubber waste or scrap. The Tribunal has missed the crucial words "rubber waste ..... and scrap". Waste arising from the process of rubberising a stainless steel wire is not a rubber waste or rubber scrap.

11. The product taken out of defective tyre remains the same as what was available earlier.

Thus, if the earlier product, waste or scrap of metal, this waste or scrap does not become anything else merely because it is taken out of a rubber tyre. That it remains waste and scrap of metal is clearly indicated by its composition which was noted by the Collector (Appeals). Unfortunately, the Tribunal did not take this aspect into account. In our view, the decision of the Tribunal cannot be upheld. The Collector (Appeals) had applied the correct principles and had correctly classified the product.

12. Accordingly, the impugned Judgment is set aside and that of the Collector (Appeals) is restored. The Appeals stand disposed of accordingly. There will be no order as to costs.