

Customs, Excise and Gold Tribunal - Mumbai

Gold Seal Engg. Products Ltd. vs Commissioner Of Central Excise on 20 May, 2003

Bench: S T Gowri, G Srinivasan

ORDER Gowri Shankar, Member (T)

1. Appeal taken up for disposal with consent, after waiving deposit.

2. In the order impugned in the appeal, the Commissioner (Appeals) has confirmed the finding of the Deputy Commissioner in the order impugned before him that the channels of rubber for tyres of motor vehicles were classifiable, not as parts of motor vehicles in Heading 87.08 of the Central Excise tariff, but as articles of vulcanised rubber other than hard rubber in Heading 40.16.

3. The notice issued to the appellant proposed classification that has been finally accepted by the Commissioner (Appeals), on the ground that it was found that the products were nothing but articles of vulcanised rubber other than hard rubber. He did not cite any such material as technical evidence or report of chemical analysis of the goods. The absence of such material was urged by the appellant to the Commissioner (Appeals) while challenging the order of the Deputy Commissioner and reiterated at the hearing before him on 10th July 2002. The Commissioner (Appeals), without informing the appellant, ordered the jurisdictional Superintendent to have the goods tested. It is stated that the samples of the goods were drawn on 13th September 2002. The report of the Chemical Examiner who visited the factory was enclosed to the letter dated 6th November 2002 of the jurisdictional Superintendent. The appellant, in its reply dated 23rd November 2002, has disputed the correctness of the conclusion contained in this report, and asked for retest. The Commissioner (Appeals) has gone solely by the report of the chemical examiner.

4. There are two grave objections to this procedure. Firstly, the letter of the Superintendent to the appellant did not make it clear that the visit of the Chemical Examiner to its factory, and his subsequent report, were made in connection with the appeal that was pending before him. The appellant has not had an opportunity of testing it before the Commissioner (Appeals) before he passed his order. The second objection is that the report of the Chemical Examiner does not lead to the conclusion that the goods are made of vulcanised rubber. The Chemical Examiner's report, after describing the ingredients of the products shows the characteristics of vulcanised rubber as it passes the elongation/recovery test for vulcanised rubber as per note 4(a) to Chapter 40 of CETA.+ACI- Note 4 to this chapter defines the scope of the expression +ACI-synthetic rubber+ACI- referred to in note 1 to that chapter and heading 40.02. Clause (a) of this note provides minimum parameters for elasticity of the synthetic rubber. In other words, it provides the minimum degree of elasticity that a synthetic product must have before it can be considered to be synthetic rubber. The Chemical Examiner's report makes it clear that the entire quantity of rubber that the appellant uses is natural rubber. It is stated that it composed of 5.6 kgs. of natural rubber 0.5 kg., reclaimed rubber 4.8 kgs. 0.5 kg. to which various substances such as whiting, zinc hydroxide, wax etc. are added. It is, of course, possible that the reclaimed rubber that is added is synthetic rubber. That is however not relevant to the issue. What was required to be determined was whether the rubber was vulcanised rubber, if so other than hard rubber. The chemical examiner's report does not, to our mind, answer this question. It does not say whether the rubber has been reacted with sulphur or any other

vulcanised agent. In this situation, the claim that was made by the appellant in its reply to the Superintendent for referring the matter for retest by the Central Laboratory at Delhi is justified. Not having done so, the Commissioner (Appeals)'s order cannot be sustained.

5. The appeal is accordingly allowed and the impugned order set aside. The department shall take steps to refer the matter to the Central Laboratory to determine, by appropriate testing or other means, whether the rubber that is used by the appellant is in fact vulcanised rubber other than hard rubber, and communicate the result of the test to the appellant. In any event that it is adverse to the appellant, it shall be given an opportunity to rebut it, in accordance with law, and the Commissioner (Appeals) shall thereafter pass orders on the issue, in accordance with law.