

COLLECTOR OF CENTRAL EXCISE

A

v.

M/S. MATADOR FOAM AND ORS.

JANUARY 5, 2005

[S.N. VARIAVA, DR. AR. LAKSHMANAN AND S.H. KAPADIA, JJ.]

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Central Excise and Tariff Act, 1985; Tariff Headings 40.08 and 94.01 and Notes under Chapters 40 and 94; Notification No.175/1986 dated March 1, 1986:

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Classification—Vulcanized rubber goods used in seats of vehicles—Levy of excise duty under Tariff Headings 40.08 or 94.01—Held: Since the goods manufactured by the assessee could only be used in seats as cushions of seats/parts of seats, the goods appropriately fall under Tariff Heading 94.01—Hence, the duty leviable under the Tariff Heading 94.01.

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Words and Phrases:

'floor or ground'—Meaning of in the context of Chapter Notes 1(a) and 2 to Chapter 94 of the Central Excise Tariff Act.

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Respondent-assesseees are the manufacturers of vulcanized rubber goods which are cut to the shape of seats of vehicles. In the classification list filed by assesseees, the product was shown under Tariff Heading 40.08 of the Excise Tariff Act. Assessing authorities claimed that the product was classifiable under Tariff Heading 94.01 and after serving show-cause notices to the assesseees and hearing them, confirmed demand for differential amount of duty, holding that Exemption Notification No.175/1986 was not applicable to the product in question. The order was affirmed by the Appellate Authorities, but reversed by the Tribunal. Hence the present appeals.

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Appellant contended that Tariff Item 94.01 is a specific Item, which deals with seats and parts thereof; that the goods are cut to the shape of seats and are only used in seats of buses, motor vehicles and/or two wheelers and thus the goods in question cannot fall into general entry covered by Tariff Heading 40.08.

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A Respondent submitted that the goods in question are cushions falling under Chapter 40 and are thus covered by Tariff Item No.40.08 and excluded from the purview of Chapter 94.

Allowing the appeals, the Court

B HELD: 1.1. Chapter Note 1(a) of Chapter 94 of Central Excise Tariff Act, 1985 excludes cushions falling in Chapter 40. At the same time, Chapter Note 2(e) of Chapter 40 excludes articles which would fall in Chapter 90 of the Act. If the goods were mere cushions they may get covered by Chapter 40 and would then be excluded from Chapter 90.

C However, if the goods are a seat or a part thereof they get specifically covered by Tariff Heading 94.01. In such cases, by virtue of Chapter Note 2(e) to Chapter 40, these goods get excluded from Chapter 40. Between Tariff Headings 94.01 and 40.08, Tariff Heading 94.01 is a more specific Heading dealing with seats and parts thereof. It is an admitted position that the goods manufactured by the assesseees are cut in the shape of seats

D and are used only in seats. They are thus cushions of seats and are parts of seats. They then fall under Tariff Heading 94.01 and Tariff Heading 40.08 thus get excluded. This view is also supported by H.S.N. Explanatory Note. Hence, the goods in question would fall under Tariff Heading 94.01 of the Act. [150-B-C-D; 151-E]

E *J.K. Foam Products v. C.C.E., Kanpur, (1997) 94 ELT 497 and C.C.E., Coimbatore v. Ajay Rubber, (1998) 100 ELT 478, approved.*

C.C.E., Madras v. M.M. Rubber Co. Ltd., Madras, (1984) 15 ELT 198, held inapplicable.

F 1.2. The term 'floor or ground' would also include floor of the car or vehicle. Seats made for vehicles are placed on the floor of the car or vehicle. Therefore, Chapter Note 2 to Chapter 94 of the Act would not exclude seats of vehicles. [150-H; 151-A]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3832-3837 of 1999.

From the Judgment and Order dated 22.1.1999 of the Central Excise Customs and Gold (Control) Appellate Tribunal, New Delhi in A. Nos. E/3450/91-D, 2793-2794-92-D and E/4593-4595/92-D in F.O. Nos. 78-83 of 1999-D.

H

R. Venkataramani, G. Umapathy, P. Parmeswaran, Ashok Panigrahi, A
S. Gowthaman and B. Krishna Prasad for the Appellant.

A.K. Jain, Rajesh Kumar, Rajesh Jain and Ms. Rajni for the Respondent.

The Judgment of the Court was delivered by

S.N. VARIAVA, J. These Appeals are against the Judgment dated B
22nd of January 1999 of the Customs, Excise and Gold (Control) Appellate
Tribunal [CEGAT].

Briefly stated the facts are as follows.

The question involved is whether the goods manufactured by the C
Respondents fall under Tariff Item 94.01 or Tariff Item 40.08. It is an admitted
position that the Respondents manufactured goods made out of vulcanised
rubber, other than hardened rubber, and their goods are cut to the shape of
seats of motor vehicles or two wheelers. The Respondents had filed a D
classification list showing the products under Tariff Heading 40.08. This had
been approved. However, a show-cause notice dated 17th May 1990 was
issued by the Assistant Commissioner raising a demand for the differential
duty on the ground that the products should correctly be classified under
Tariff Item 94.01. After giving a personal hearing, the Assistant Commissioner
confirmed the demand. Thereafter, three further show-cause notices dated E
31st May 1990, 1st May 1990 and 31st May 1990 respectively were issued
to the Respondents calling upon them to show-cause as to why the benefit
wrongly availed of them under Notification No. 175 of 1986 dated 1st March
1986 be not cancelled. The Respondents were called upon to pay duty. After
hearing the Respondents, by Orders dated 13th March 1991, it was held that F
the Respondents were not entitled to exemption. They were called upon to
pay duty.

It must be mentioned that the Board issued a clarification that the
goods of the kind manufactured by the Respondents were classifiable under
Tariff Heading 94.01 if they were meant for seats of motor vehicles and
Tariff Heading 87.14 if they were meant for seats of two wheelers. G

The Respondents filed the Appeals, which were dismissed by the
Commissioner (Appeals). The Respondents then filed further Appeals to
CEGAT. Earlier decisions of CEGAT, holding that such goods fell under
Tariff Heading 94.01 were cited. In spite of that CEGAT concluded, in the H

A impugned Judgment, that such goods should fall under Tariff Heading 40.08. In so doing, CEGAT relied upon another Judgment of the Tribunal which had dealt with earlier Tariff Headings 16A and 34A. It must be mentioned that those Tariff Headings were completely different from the Tariff Headings now under consideration.

B Tariff Headings 94.01 and 40.08 read as follows:

“94.01: Seats (other than those of heading No.40.01), whether or not convertible into beds, and parts thereof.

40.08: Plates, blocks, sheets, strikes, rods and profile shapes of vulcanized rubber other than hardened rubber of cellular rubber.”

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It is also necessary to consider certain Chapter Notes which have been relied upon by the parties. In Chapter 94, Notes 1 (a) and 2 read as follows:

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“1. This Chapter does not cover:

(a) Pneumatic or water mattresses, pillows or cushions, of Chapter 39,40 or 63;

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.....

 2. The articles (other than parts) referred to in heading Nos.94.01 to 94.03 are to be classified in those headings only if they are designed for placing on the floor or ground.

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The following are, however, to be classified in the above-mentioned headings even if they are designed to be hung, to be fixed to the wall or to stand one on the other:

(a) Cupboards, bookcases, other shelved furniture and unit furniture;

(b) Seats and beds.”

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In Chapter 40, Notes 2 (e) and 9 read as follows:

“2. This Chapter does not cover:

(a)

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(b)

(c)

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(d)

(e) Articles of Chapter 90, 92, 94 or 96;

(f)”

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9. 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.

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In heading No.40.08, the expressions ‘rods’ and ‘profile shapes’ apply only to such products, whether or not cut to length or surface-worked but not otherwise worked.

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Sub-heading No.4008.21 shall also apply to “plates”, “sheets” and “strips”, whether or not cut to shape and surface-worked or further worked so as to render them fit for resoling or repairing or re-treading of rubber-tyres.”

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Mr. Jain, learned counsel for the Respondents, has strongly relied upon Chapter Note 1 (a) of Chapter 94 and submitted that pneumatic or water mattresses, pillows or cushions of Chapter 39, 40 and 63 are excluded from Chapter 94. He submitted that Respondents’ goods are cushions falling under Chapter 40 and are thus covered by Tariff Item 40.08. They submitted that they are thus excluded from the purview of Chapter 94. He submitted that, therefore, Tariff Heading 94.01 cannot cover goods of the Respondents.

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On the other hand, Mr. Venkataramani submitted that Tariff Item 94.01 is a specific Item, which deals with seats and parts thereof. He pointed out that it is an admitted position that the Respondents goods are cut to the shape of seats and are only used in seats of buses, motor vehicles and/or two wheelers. He submitted that there being a specific Entry covering seats and parts thereof, these goods cannot fall into general entry covered by Tariff Heading 40.08. In support of his submissions, Mr. Venkataramani relied upon Chapter Note 2(e) of Chapter 40 and submitted that any goods which

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A falls within any of the Tariff Items in Chapter 90 gets excluded from Chapter 40.

We find substance in the submission of Mr. Venkataramani Chapter Note 1(a) of Chapter 94 excludes cushions falling in Chapter 40. At the same time, Chapter Note 2(e) of Chapter 40 excludes articles which would fall in Chapter 90. Thus, one would have to see which of the Tariff Headings, in these two Chapters, specifically deals with goods of the type manufactured by Respondents. If the goods were mere cushions they may get covered by Chapter 40 and would then be excluded from Chapter 90. However, if the goods are a seat or a part thereof they get specifically covered by Tariff Heading 94.01. In such cases, by virtue of Chapter Note 2(e) to Chapter 40, these goods get excluded from Chapter 40. Between Tariff Headings 94.01 and 40.08, Tariff Item 94.01 is a more specific heading dealing with seats and parts thereof. It is an admitted position that the goods manufactured by the Respondents are cut in the shape of seats and are used only in seats. They are thus cushions of seats and are parts of seats. They then fall under Tariff Heading 94.01 and Tariff Heading 40.08 thus get excluded. This view is also supported by H.S.N. Explanatory Note, which states that Tariff Entry 94.01 would cover all seats including seats of vehicles.

It must, however, be stated that seats of two wheelers get excluded from Chapter 94 by virtue of Chapter Note 1(h), which reads as follows:

“1. This Chapter does not cover:

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(h) Articles of heading No.87.14.”

Chapter Note 87.04 specifically deals with parts of two wheelers. Therefore, seats of two wheelers would fall under Tariff Heading 87.14.

Mr. Jain next relied upon Chapter Note 2 to Chapter 94 (which has been set out hereinabove). He submitted that Tariff Heading 94.01 would only cover seats which have been designed for placing on the floor or on the ground or which could be hung or fixed on the wall or designed to stand one on the other. He submitted that seats of cars are not designed to be placed on the floor or ground and therefore they would not be covered under Tariff Heading 94.01. We are unable to accept this submission. The term ‘floor or

ground' would also include floor of the car or vehicle. Seats made for vehicles are placed on the floor of the car or vehicle. Therefore, Chapter Note 2 would not exclude seats of vehicles. This also finds support from H.S.N. Explanatory Notes. A

Reliance was also sought to be placed, by Mr. Jain, on Chapter Note 9 of Chapter 40 which has been reproduced hereinabove. In our view, this Chapter Note does not in any way assist the Respondents. B

In the above view, it will have to be held that the impugned Judgment cannot be sustained.

Before we part one other aspect must be mentioned. As stated above, earlier Judgments of the Tribunal in the case of *J.K. Foam Products v. C.C.E., Kanpur*, reported in (1997) 94 ELT 497 and *C.C.E., Coimbatore v. Ajay Rubber*, reported in (1998) 100 ELT 478, were cited. These Judgments are directly on the point. It has been held that such goods are classifiable under Tariff Heading 94.01. These being Judgments of coordinate Benches were binding on the Tribunal. Judicial discipline required that the Tribunal follow those Judgments. If the Tribunal felt that those Judgments were not correct, it should have referred the case to a larger Bench. The Judgment in the case of *C.C.E., Madras v. M.M. Rubber Co. Ltd., Madras*, reported in (1984) 15 ELT 198, was based on the then Tariff Items 16A and 34A. Those Tariff Items were completely different. That Judgment has no relevance to the question under consideration. C
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In the above view, the impugned Judgment is set aside. It is held that the goods of the Respondents would fall under Tariff Heading 94.01.

The Appeals are accordingly allowed. There will, however, be no order as to costs. F

S.K.S.

Appeals allowed.