**(1997) 12 SC CK 0025**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 2940 of 1991 with No''s. 2112 of 1988 and 8341-42 of 1995

Collector of Central Excise, Madras APPELLANT

Vs

MRF Limited RESPONDENT

**Date of Decision :** 03-12-1997

**Acts Referred:**

**Citation :** (1998) 97 ELT 23 : (1997) 9 JT 764 : (1997) 7 SCALE 470 : (1998) 1 SCC 301

**Hon'ble Judges :** S. P. Bharucha, J;S. C. Sen, J

**Bench :** Division Bench

**Advocate :** Joseph Vellapalli, Anoop G. Choudhary, Rajiv Nanda, V.K. Verma, S.D. Sharma, S. Ganesh, K.R. Nambiar, V. Sridharan, T. Viswanathan, V. Balachandran and Rajesh Kumar, for the Appellant;

**Final Decision :** Dismissed

## Judgement

Bharucha, J.—We are concerned in these appeals with the product "rubber cement" or "black vulcanizing cement" manufactured by the assessees. The case before the Tribunal was that the said product fell under Tariff Entry 40.17 according to the assessees and under Tariff Entry 40.05 according to the Revenue, the appellant before us. The Tribunal came to the conclusion that the said product was correctly classifiable under Tariff Item 35.01 prior to 10-2-1987, and under Tariff Item 35.06 thereafter. The assessees have accepted the classification made by the Tribunal. Only the Revenue is in appeal.

2. Tariff Entry 40.05 reads thus:

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Heading No. Sub-heading No. Description of goods Rate of duty

40.05 4005.00 Compounded rubber, un vulcanised, in primary forms or in plates, sheets or strip. 40%

 

Tariff Entries 35.01 and 35.06 read thus:

Heading No. Sub-heading No. Description of goods Rate of duty

35.01

Albuminoidal substances; modified starches; glues; enzymes

3501.10 - Esterified starches 40%

3501.20 - Dextrines and other modified starches 15%

3501.90 - Others 15%

35.06 3506.00 Prepared glues and other prepared adhesives, not elsewhere specified or included. 15%

3. The Tribunal noted the process by which the said product was manufactured. It found that the raw material that was used to manufacture the said product was classified by the Revenue under Tariff Entry 40.08, which reads thus:

"40.08 Plates, blocks, sheets, strip, rods and profile shapes, of vulcanised rubber other than hardened rubber."

The Tribunal said that this would point to the position that the raw material was vulcanised rubber and that, therefore, the said product could not possibly fall within Tariff Entry 40.05 which spoke of "Compounded rubber, un vulcanised, in primary forms ...".

4. Learned counsel for the Revenue drew our attention to Chapter Note 3 of Chapter 40 of the Central Tariff which reads thus:

"3. In Heading Nos. 40.02, 40.03 and 40.05, the expression 'primary forms' applies only to liquids and pastes (including latex, whether or not prevulcanised, and other dispersions and solutions), and blocks of irregular shape, lumps, bales, powders, granules, crumbs and similar bulk forms."

5. It seems to us that no argument based on Chapter Note 3 or otherwise can be of any avail to the Revenue, having regard to the undisputed position that what is used as a raw material to produce the said product is classified by the Revenue itself as vulcanised rubber. If the raw material is vulcanised rubber, the said product made from it cannot possibly be un vulcanised compounded rubber.

6. The Revenue is, therefore, unable to satisfy us that the said product falls under Tariff Item 40.05 as it claims. It cannot argue that, in any event, the Tribunal was in error in classifying the said product under Chapter 35.

7. The appeals are dismissed with no order as to costs.

 