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(1997) 02 SC CK 0007

In the Supreme Court Of India

Case No : Civil Appeal No. 3328 Of 1993

Kohinoor Rubber Mills	APPELLANT
Vs	
Collector of Central Excise, Chandigarh	RESPONDENT

Date of Decision : 20-02-1997

Acts Referred:

Citation : (1997) 92 ELT 36 : (1997) 11 SCC 148

Hon'ble Judges : S. P. Bharucha, J;S. B. Majmudar, J

Bench : Division Bench

Final Decision : dismissed

Judgement

S.P. Bharucha, J.—This is an appeal against the judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal relating to the classification of what are known as rice rubber rolls. These are rubber sheets wrapped on malleable steel shells by a wrapping machine. After removal from the wrapping machine, they are cured in a hydraulic press and then vulcanised in open steam vulcanisers. They are then cut to the required lengths. The rice rubber rolls are used in the rice milling industry for shelling rice. They are fitted onto such machinery, utilising their hollow spaces for that purpose.

2. The assessee contended that the rice rubber rolls manufactured by it should be classified under Tariff Item 40.09 which deals with "tubes, pipes and hoses of vulcanised rubber, other than hard rubber, with or without their fittings (for example, joints, elbows, flanges)". It is pointed out by learned Counsel for the assessee that Item 40.09 includes tubes, pipes and hoses "designed to perform the function of conveying air, gas or liquid" (4009.92) as also "other" tubes, pipes and hoses (4009.99). It is submitted that Item 40.09 is the most specific heading applicable to rice rubber rolls.

3. The Revenue contends that rice rubber rolls fall under Item 40.16 which deals with "other articles of vlucanised rubber other than hard rubber", and the contention of the Revenue was accepted by the Tribunal in the order under

appeal.

4. It is true that at different times the Tribunal and the Excise authorities have taken different views on the classification of rice rubber rolls, including the view propounded by learned Counsel for the assessee.

5. What is of assistance for the purpose of arriving at the correct classification of rice rubber rolls is a Circular dated 11-1-1990 issued upon the basis of a consensus arrived at a conference of Collectors of Central Excise. The consensus was that, ordinarily, rice rubber rolls would have been classified under Chapter 84. Chapter 84, however, fell within Section XVI of the Tariff and Section Note 1(a) stated that Section XVI did not cover articles of the kind used in machinery or unhardened vulcanised rubber (Item 40.16). Accordingly, rice rubber rolls were found to be correctly classifiable under Heading 40.16. This view was strengthened by the Explanatory Note at Serial No. 9 under Item 40.16 of the Harmonized Commodity description and Coding System (HSN), upon which the present excise tariff is based. That Explanatory Note states that Heading 40.16 includes "other articles for technical uses including parts and accessories of machines and appliances" falling under, amongst others, Section XVI.

6. Item 40.09 does include tubes, pipes and hoses which are not designed to perform the function of conveying air, gas or liquid, but, having regard to the construction of rice rubber rolls and the use for which they are designed, we think, for the reasons that we have indicated above, that the Tribunal was right in arriving at the conclusion that they should be classified under Item 40.16.

7. The appeal, accordingly, fails and is dismissed, but with no order as to costs.