CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70449 of 2019

(Arising out of Order-in-Original No.LKO/EXCUS//COMM/CEX/15/2018-19 dated 21/02/2019 passed by Commissioner, Central Goods & Service Tax And Central Excise, Lucknow)

M/s Aryan Exporters (P) Ltd. **.....Appellant**

(B-1, Industrial Area, Amausi, Lucknow)

VERSUS

Commissioner, CGST &

Central Excise, Lucknow **.....Respondent**

(7-A, Ashok Marg, Lucknow)

<u>APPEARANCE:</u>

Shri Kapil Vaish, Chartered Accountant for Appellant
Shri Rajeev Ranjan, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 05 September,2019
DATE OF PRONOUNCEMENT : 31 October, 2019

FINAL ORDER NO.71828/2019

PER : ANIL G. SHAKKARWAR

Present appeal is directed against Order-In-Original No.LKO/EXCUS/COMM/CEX/15/2018-19 dated: 21.02.2019 passed by Commissioner CGST and Central Excise, Lucknow.

2. Brief facts of the case are that the appellants are Central Excise Assessee and have registered themselves for

payment of Central Excise duty. During the period from 1988 to 1991 appellant used to manufacture goods such as Rubber buffer spring Freight Stock, Rubber recoil spring, Rubber draft gear pads, Elastomeric pads, Side bearer pads and Meter gauge pads. There was dispute in respect of classification of the said goods and the same was resolved through Final Order No.839/99-B dated 10.08.1999 by this Tribunal and it was held that aforestated goods manufactured by the appellant were appropriately classifiable under chapter 40 sub-heading No.4016.19 of schedule to Central Excise Tariff Act, 1985. During the proceedings which were settled through the aforestated final order, the contention of Revenue before learned Collector of Customs and Excise (Appeals) was that the aforestated goods manufactured by the appellant were appropriately classifiable under sub-heading No. 8607 of schedule to Central Excise Tariff Act, 1985. During the period upto May 2016, rate of duty for chapter sub-heading No.4016 and 8607 remained the same. As per the said final order of this Tribunal appellant classified above stated goods under chapter sub-heading no.4016. In the meantime appellant manufactured 26 other items. The list is as follows:-

1. POLYURETHANE SIDE BEARER PAD FOR HS BOGIES
2. POLYURETHANE SIDE BEARER PAD FOR NLB BOGIES
3. PU SPRING PAD (HAPPY PAD)
4. BEARING ADAPTOR SPACER
5. CASTABLE LOWER WASHER
6. CASTABLE UPPER WASHER

7. BRAKE GEAR BUSHES

8. POH KIT FOR POLYURETHANE SIDE BEARER PAD

9. POH KIT FOR POLYURETHANE SIDE BEARER PAD NLB

10. POLY RING FOR POLYURETHANE SIDE BEARER PAD

11. HOUSING TOP & BOTTOM

12. ROUND PLATE FOR POLYURETHANE SIDE BEARER PAD

13. PU SLEEVE TOP & BOTTOM FOR POLYURETHANE SIDE BEARER PAD

14. MODIFIED ELASTOMERIC PAD

15. CENTER PIVOT WASHER

16. METAL BONDED SIDE BEARER RUBBER PADS (MSBP-H)

17. HIGH TENSILE PAD (RF-8)

18. RUBBER SPRINGS FOR COACHES FOR DRAW GEAR

19. LOWER & UPPER RUBBER WASHER

20. SIDE BEARER (SECONDARY SPRING) (M P.0.49.00.17 Rev-00)

21. SIDE BEARER (SECONDARY SPRING) (VL-03)

22. HIGH CAPACITY BUFFER SPRING FOR B.G. COACHES

23. CENTER PIVOT RUBBER BUSH

24. BONDED RUBBER SANDWITCH MOUNTING

25. RUBBER BUFFER SPRING FOR LOCO MOTIVES

26. TRACTION MOTER BELLOW

3. Appellant classified aforestated 26 types of goods manufactured by them under chapter sub-heading no. 4016 and paid duty accordingly. All the goods manufactured by the appellant were as per specialization supplied by Indian Railway and all the goods manufactured were supplied either to Indian Railways or to the vendors of Indian Railway and were ultimately consumed by Indian Railway. In the year 2016, Notification No.12/2016-CE dated 01.03.2016 was issued through which rate of Central Excise duty on parts of Railway falling under chapter heading No.8607 was reduced to 6% *ad valorem* whereas the rate of duty for goods falling under chapter heading No.4016 continued to be 12.5% *ad valorem*. The appellant still continued to classify all the 6 plus 26 variety of goods manufactured by them under chapter heading No.4016 and continued to pay duty @ 12.5% *ad valorem.* For the period from 01.03.2016 to May 2016 Indian Railway refused to reimburse Central Excise duty @ 12.5% under chapter heading No.4016 and reimbursed duty @ 6% *ad valorem* applicable to goods falling under chapter heading No.8607. Therefore, w.e.f. May 2016 appellants started classifying above stated 26 items and Rubber Buffer Spring For Freight Stock and Side Buffer Recoil Spring under chapter heading No.8607 and started paying Central Excise duty @ 6% *ad*

valorem. For the period from March 2016 to April 2016 appellant claimed refund of differential duty between the 6% and 12.5%. The said refund was rejected by the Original Authority, however, on filing appeal with Commissioner (Appeals), the said Commissioner (Appeals) held that the goods manufactured by the appellant were classifiable under chapter sub-heading No.8607 and allowed refund. For the period from May 2016 to June 2017 Revenue issued show cause noticed dated 04.06.2018 to the appellant demanding differential Central Excise duty to the tune of around Rs.2.38 crore which is difference between duty @12.5% *ad valorem* and duty paid @ 6% *ad valorem*. The appellant contended before the learned Commissioner viz. Original Authority that appellant's contention that all the above stated 26 items manufactured by the appellant were held to be classifiable under chapter heading No.8607 by learned Commissioner (Appeals) and that all the goods manufactured by the appellant were 100% consumed by Indian Railway and that chapter 86 was specialized chapter for Railway or Tramway Locomotives and chapter heading No.8607 is specific entry for parts of Railway or Tramway Locomotives and goods manufactured by the appellant were 100% used by Indian Railways. The learned Commissioner through impugned order in original has held the Tribunal has already finalized classification under chapter heading No.4016 and that the order allowing refund passed by Commissioner (Appeals) has been accepted on the ground of monetary limit and cannot be relied upon in deciding the classification. He, therefore, held that the goods were classifiable under chapter heading No. 4016 and confirmed the demand alongwith interest and imposed penalty of Rs. 23,79,900/- (twenty three lakhs seventy nine thousand nine hundred). Aggrieved by the said order appellant is before this Tribunal.

4. Heard the learned Consultant Shri Kapil Vaish on behalf of the appellant. Learned Consultant has submitted that out of the 28 types of goods manufactured by the appellant, the decision of this Tribunal through said Final Order dated 10.08.1999 was in respect of only two goods namely Rubber Buffer Spring For Freight Stock and Side Buffer Recoils Spring. He submitted that the said two types of goods were among the 6 types of goods that were manufactured during relevant period and this Tribunal had decided classification of those goods to be under sub-heading No.4016. He submitted that the remaining 26 goods stated above were not the subject matter of classification before this Tribunal. Therefore, the said Final Order dated 10.08.1999 was applicable only to Rubber Buffer Spring For Freight Stock and Side Buffer Recoils

Spring. The other 4 types of goods in respect of which the said final order was passed were not manufactured during the period of dispute. The remaining 26 items stated above deserve to be classified under chapter heading No.8607 because of following reasons:-

a. All the said goods are parts of Railway and 100% supplied to Indian Railways. The chapter sub-heading No.4016 is provided for "other articles of vulcanized rubber other than hard rubber". As per rule 3(a) of General Rules for the Interpretation of Tariff the heading which provides the most specific description shall be preferred to the heading providing a more general description 8607 provides more specific description as parts of Railway whereas 4016 provides general description as other articles of vulcanized rubber. In many of the goods among the list of 26 types of goods rubber is not at all used.
b. As per rule 3(c) of General Rules for Interpretation the goods shall be classified under the heading which occurs last in the numerical order. Among the headings 4016 and 8607, 8607 occurs in the last and therefore said rule of interpretation also

supports classification of above stated 26 types of goods under heading No.8607.

c. The other manufacturers are classifying the goods under heading No.8607 as can be seen by final order passed by this Tribunal in the case of Sunflex Auto Parts Vs. Commissioner of Central Excise (Appeals), Mumbai-(II) reported as 2004 (171) ELT 188 (Tri.– Mumbai) and final order passed by this Tribunal in the case of Uni Deritend Limited Vs. Commissioner of Central Excise, Mumbai-(II) reported as 2014 (313) ELT 423 (Tri.-Mumbai).

5. Heard the learned A.R. who has submitted that the matter is already decided by this Tribunal through said Final Order dated 10.08.1999. Therefore, the issue of classification cannot be opened now.

6. Having considered the submissions from both sides and on perusal of record. We note that the learned Original Authority has held classification of all the 28 items manufactured by appellant to be under chapter heading No.4016 on the strength of the said Final Order dated 10.08.1999. We note that during the material period for which said order was passed only 6 types of goods stated above were manufactured by the appellant. During the relevant period of the present demand only 2 items out of

them such as Rubber Buffer Spring For Freight Stock and Side Buffer Recoils Spring were manufactured by the appellant. We, therefore, hold that since the issue has attained finality Rubber Buffer Spring For Freight Stock and Side Buffer Recoils Spring shall be assessed in accordance with the rate of duty prevailing during the relevant time by classifying the said 2 items under chapter heading No.4016. We hold that remaining 26 types of items which were not manufactured till 1992 cannot be considered to be those on which this Tribunal had passed said order dated 10.08.1999. Since said 26 types of goods were not subject matter of dispute, we are free to decide classification of remaining 26 types of items as list above. In so far as the classification of said 26 items manufactured by appellant are concerned since all of them are supplied to Railway the description under heading No. 8607 is more appropriate for them as compared to description under chapter heading No.4016. Further, as per Rule 3(a) and 3(c) of Rules for Interpretation the classification under heading No.8607 is appropriate. Further, we note that the other manufacturers such as Sunflex Auto Parts and Uni Deritend Limited have also been held to be manufacturing similar goods to be classifiable under chapter heading No.8607 by aforestated two orders of this Tribunal. We, therefore, hold that the said 26 items manufactured by the appellant are appropriately classifiable under chapter heading No.8607. We, therefore, hold that differential duty demanded in respect of afore stated 26 types of goods is not sustainable. We, therefore, set aside the demand with interest and penalty in respect of said 26 types of goods. Revenue is free to calculate differential duty for the period from May 2016 to June 2017 in respect of Rubber Buffer Spring For Freight Stock and Side Buffer Recoils Spring alongwith interest.

7. In above terms appeal is rejected in respect of Rubber Buffer Spring For Freight Stock and Side Buffer Recoils Spring and Appeal is allowed in respect of rest 26 types of goods.

(Order Pronounced in the open Court on 31/10/2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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