

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – III

Customs Appeal No. 50453 of 2019 [DB]

[Arising out of Order-in-Appeal No. CC (A) CUS/D-II/ICD/Imp/TKD/2694/2018 dated 06.11.2018 passed by the Commissioner of Customs (Appeals), New Delhi]

M/s. Vinflex Products Pvt. Ltd.

...Appellant

B-43, Sector 88, Phase-II,
Distt. Gautam Bhudh Nagar,
Noida, Uttar Pradesh-201305

VERSUS

**Commissioner of Customs,
New Delhi**

...Respondent

New Customs House,
Near I.G.I. Airport,
New Delhi - 110037

APPEARANCE:

Ms. Jyotika Sharma, Advocate for the Appellant
Shri Rakesh Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

DATE OF HEARING: 18.03.2024
DATE OF DECISION: **02.04.2024**

FINAL ORDER No. 55473/2024

RAJEEV TANDON

The appellant has filed the instant appeal assailing the Order-in-Appeal No. CC (A) CUS/D-II/ICD/Imp/TKD/2694/2018 dated 06.11.2018, whereby the learned Commissioner (Appeals) has upheld the Order of the learned Adjudicating Authority, rejecting the appeal filed by the appellant.

2. The appellant had filed four Bills of Entry Nos. 7675641 dated 16.08.2012, 8194109 dated 11.10.2012, 8361533 dated

31.10.2012 and 8776682 dated 17.12.2012, for clearance of imported goods declared as "Rice Mill Rubber Rollers", classifying the goods under CTH 8437 90 20. The said goods were assessed accordingly and out of charge granted. Subsequently, in pursuance of the audit objection TAM No. CRA/TKD/257/2012-13/1166 dated 14.02.2013, the appellants were issued show cause notice dated 01.03.2013 proposing the classification of the said goods under Heading 4016 9990 and demanding differential duty of Rs.5,52,709/- under Section 28 of the Customs Act along with applicable interest under Section 28AB of the Act. The impugned show cause notice was confirmed by the adjudicating authority and upheld by Commissioner (Appeals).

3. The appellants are in appeal against the aforesaid order of reclassification under the CTH as indicated above and claim for differential duty along with interest. It is the submission of the learned Advocate Ms. Jyotika Sharma for the appellants, that there has been no mis-classification of the subject import goods declared as Rice Mill Rubber Rollers and the department had cleared them after due verification of the classification, quality, quantity, value, description and upon payment of customs duty as assessed at the time of import. It may be pertinent to point out here, that the present proceedings are in the second round of litigation and this Tribunal had remanded the matter vide order dated 31.01.2017 to Commissioner (Appeals) to decide the matter on merits. The present proceedings are an outcome of the said *de novo* proceedings. Learned Advocate has argued that the Commissioner

(Appeals) in the impugned order had relied solely on the decision of Hon'ble Apex Court in the case of **M/s. Kohinoor Rubber Mills Vs. Collector of Central Excise, Chandigarh [1997 (92) ELT 36 (SC)]**, completely ignoring the fact that the present case could not be based on the said decision of the Hon'ble Apex Court for the reason that the issue in the **M/s. Kohinoor Rubber Mills** (supra) case was concerned with the classification of the imported product under CTH 40.09 and CTH 40.06, wherein the Hon'ble Apex Court relied upon Section Note 1(a) of Section XVI and inferred that Section XVI did not cover articles of the kind used in machinery of unhardened vulcanized rubber.

3.1 It may however be pointed out that the Hon'ble Apex Court in the **M/s. Kohinoor Rubber Mills** case had observed that by virtue of Explanatory Note at serial number 9 under item 40.16 of the HSN includes "*other articles for technical uses including parts and accessories of machines and appliances falling under, amongst others, Section XVI*". The appellant submits that the Hon'ble Apex Court in the matter was concerned with Rubber Rollers without fitments whereas in their own case the goods were specifically designed as components of the Rice Mill having a drum shaped aluminum core with flanges and slots for fixing the unit to the shaft of a pneumatic de-husking machine with a layer of rubber wrapped on the aluminum core. They submit that same was also confirmed during the examination of the goods by the assigned Chartered Engineer. It is therefore their case that in view of the specific shape and size of the imported goods, they were fit to perform

specific function in a Pneumatic De-Husking machine as part of Pneumatic Paddy De-husker and was solely designed for the same and therefore merited classification under CTH 8437

4. Learned AR, Shri Rakesh Kumar, however on the other hand submits that the scrutiny of the documents including Explanation to HSN classification revealed that Rice Mill Rubber Rollers are classifiable under CTH 4016 and Notification No. 12/2012-CE (Sr. No. 155) dated 17.03.2012 *inter alia* refers to the same. He thereby supported the order of the lower authority holding misclassification of the goods and confirming the duty short levied along with interest.

5. We have perused the case records and considered the submissions made by the two rival factions.

6. The primary question concerns appropriate classification of "Rice Mill Rubber Roller" and appropriate levy of duty thereon. It is therefore necessary to peruse the relevant Section Notes, Chapter Notes and examine the issue in the light of the pronouncement of the Hon'ble Apex Court referred to supra. As the appellant importer has sought the classification of the goods under Chapter 84, it would be imperative to refer to the Section Note concerning the same. For ready reference the relevant part of Section XVI is reproduced as under:

SECTION XVI

**MACHINERY ANY MECHANICAL APPLIANCES;
ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND**

**RECORDERS AND REPRODUCERS, TELEVISION IMAGE
AND SOUND RECORDERS AND REPRODUCES; AND PARTS
AND ACCESSORIES OF SUCH ARTICLES**

NOTES:

1. This Section does not cover:

(a) Transmission or conveyor belts or belting, of plastics of Chapter 39, or of vulcanized rubber (heading 4010), or other articles of a kind used in machinery or mechanical or electrical appliances or for other technical uses, of vulcanized rubber other than hard rubber (heading 4016);

(b)

(c)

.....

.....

.....

7. Reading thereof clearly suggests that the said section does not cover articles of a kind used in machinery of vulcanized rubber which appropriately merit classification under CTH 4016. The question therefore now remains whether the imported goods were of vulcanized rubber or otherwise. It is observed that the Chartered Engineer Certificate as submitted by the appellants indicates that the imported goods were made of synthetic rubber. It has not been pleaded by the learned Advocate at any stage that the imported goods were not vulcanized. As is well known, rubber can be natural or synthetic and both synthetic as well as natural rubber can be vulcanized. Rice Rubber Roller can therefore be manufactured out of vulcanized synthetic rubber or vulcanized natural rubber. As is commonly known vulcanization is a process

undertaken to induce strength and elasticity. This is so done chemically by adding sulphur into natural or synthetic rubber, in given quantities so as to harden it but to not render it brittle. The fact that both natural and synthetic rubber can be subjected to vulcanization, to impart the requisite characteristics for purpose of its usage as Rice Mill Rubber Roller is undisputed. Obviously, hard rubber, whether natural or synthetic is not usable for rubber rollers as it would lead to frequent breakdowns, nor it is the case of the appellant that the rubber so used was hard rubber. It also nowhere emanates from records that the imported goods were made of hard rubber, nor is it in the least the contention of the appellant before us. In view of the tensile strength required and the fact of non-usability of hard rubber for the given purpose and there being no claim to the effect from the appellants, it arises that the impugned goods were synthetic vulcanized rubber appropriately made to have requisite elasticity and or other characteristics.

8. In this backdrop, it would also be necessary to invite attention to CTH 40.16, which reads as under:

"40.16 Other articles of vulcanised rubber other than hard rubber.

4016.10 - Of cellular rubber

- Other:

4016.91 -- Floor coverings and mats

4016.92 -- Erasers

4016.93 -- Gaskets, washers and other seals

4016.94 -- Boat or dock fenders, whether or not inflatable

*4016.95 -- Other inflatable articles**4016.99 -- Other*

This heading covers all articles of vulcanised rubber (other than hard rubber) not covered by the preceding headings of this Chapter or by other Chapters.

The heading includes:

(1) Articles of cellular rubber.

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9) Pump rotors and moulds, rubber liners for milking machines; taps, cocks, valves and similar appliances, other articles for technical uses (including parts and accessories of machines and appliances of Section XVI and of instruments and apparatus of Chapter 90).

(10)

(11)

.....

.....

The following are also excluded from this heading:

(a) Articles of woven, knitted or crocheted fabrics,.....

(b) Footwear and parts thereof

(c) Headgear (including bathing caps)

(d) Vacuum cup holders (suction grips)

(e) Rubber boats and rafts

(f) Parts and accessories of musical instruments

(g) Mattresses, pillows and cushions of cellular rubber, ...

(h) Toys, games and sports

(i) Date, sealing or numbering stamps, and the like, designed for
.....

(Emphasis Supplied)

9. The reading of the serial number 9 above, clearly suggests inclusion of Rice Mill Rubber Rollers under this Heading within its ambit as pertained to machine and appliances of Section XVI. Elaborate reference was made to the Apex Court's decision in **M/s. Kohinoor Rubber Mills** case. Relevant portions of the Hon'ble Apex Court's Order holding the classification under 4016 of the CTH **[1997 (92) ELT 36 (SC)]** is reproduced here under:

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 vulcanized 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.

(Emphasis supplied)

10. As observed by the Hon'ble Apex Court what supplements the aforesaid classification is the Explanatory Note at serial number 9 under Item 40.16 of the Harmonized Commodity description and Coding System (HSN), as also noted by the Hon'ble Apex Court in its order. While it is not disputed that parts of rice mill machinery are incorporated under CTH 84379020, however, by virtue of the relevant Chapter Notes and Section Notes as referred above and in accordance with Rule 1 of the General Rules for the Interpretation of the Tariff Schedule, of the import tariff schedule, it is undeniable that the imported goods merit classification under Heading 4016 9990.

11. We also note that the Tribunal's decision referred to in the case of **Collector of Central Excise Vs. Kohinoor Rubber Mills [1993 (67) E.L.T 816]** has dwelt on the subject of classification of Rice Mill Rubber Rollers in extenso, though the competing CTH in the said case was not 8437, however, the principles adopted for classification of the said goods under CTH 4016 are squarely applicable in the present case as well. Moreover, we also note that this Tribunal in the case of **Commissioner of Customs, Chennai Vs. Nirmala Agencies [2016 (6) TMI 863 (Tri.-Chennai)]** had

also considered the impugned question of classification of Rice Milling Rubber Roller, Paddy De-husking Rubber Roller, wherein the identical question of law is concerned with and following the decision of the Hon'ble Apex Court, the Tribunal in the aforesaid decision held that the said goods were appropriately classifiable under 4016 9990.

12. In view of our discussions above and the precedent judgments cited, we find no infirmity in the order of the learned Commissioner (Appeals). The same is therefore upheld and the appeal filed by the appellant is dismissed.

[Order pronounced in the open court on **2nd April, 2024**]

(BINU TAMTA)
MEMBER (JUDICIAL)

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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