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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/5615/2004 - EX[DB] Date 19/05/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SYNDICATE TUBES (PROP.) OM CYCLE INDS. (P) LTD
ACCHRONDA, PARTAPUR, MEERUT-I

M/S SYNDICATE TUBES (PROP.) OM CYCLE INDS. (P) LTD — Appellant

Vs

C.E.E. MEERUT-I — Respondent

I am directed to transmit herewith a certified copy of **Final order No.**347/2009- **EX[DB]** dated 22-4-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   C.C.E. MEERUT-I
   UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18.HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:22.4.2009

Central Excise Appeal No.5615 of 2004

Arising out of the order in appeal No.497-CE/MRT-I/2004 dated 13.8.04 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut I.

For Approval and Signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes.

M/s Syndicate Tube .... Appellant

Vs.

C.C.E., Meerut I .... Respondent

Appearance:

Shri Atul Gupta, Company Secretary for the appellants
Shri B.S. Suhag, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Oral Order No. 347/09-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the learned Advocate for the appellant and the learned DR for the respondent.

2. The present appeal arises from the order dated 13th August, 2004 passed by the Commissioner (Appeals) whereby the order passed by the Additional Commissioner, Meerut on 31st March, 2004 was sought to be modified. The grievance of the appellant relates to the period 1.3.04 to 16.3.04 for which the product in question was subjected to excise duty which was otherwise exempted under the Notification No.152/87 –CE dated 25.5.87 which was effective from 1.4.88 till 28.2.1994.

3. The appellants are engaged in the manufacture of rubber tyres and tubes classifiable under 40.11 and 40.13 respectively. For the purpose of manufacture of tyres and tubes, the appellants were manufacturing compounded rubber which is an excisable product. However, it was subjected to exemption pursuant to Notification No.152/87-CE dated 25.5.87. Accordingly, the appellants were availing the exemption under the said notification in relation to the compounded rubber till February 1994.

4. On 1.3.94, a Notification No.64/94-CE, dated 1.3.94 came into force which rescinded the Notification No.1`52/87 and consequently, the compounded rubber was subjected to excise duty. However, pursuant to subsequent Notification, the earlier position as was in force under the Notification No.152/87 was sought to be restored and consequently, the product enjoyed the exemption from the payment of excise duty from 17.3.94.

5. The appellants were served with a show cause notice dated 10.5.94 requiring them to show cause as to why the excise duty to the tune of Rs.1,54,344.96 should not be demanded on the compounded rubber manufactured during the period 1.3.94 to 16.3.94, the same being classifiable under 40.05, which was subject to duty @ 20% in terms of the Notification No.16/94. The appellant disputed the claim of the Department while contending that preparation of compounded rubber was not manufacturing activity which can be subjected to excise duty, and it was non-marketable. The Additional Commissioner, Meerut rejected the contention on behalf of the appellants and

confirmed the demand for a sum of Rs.1,54,344.96 for the period 1.3.94 to 16.3.94. The matter was carried in appeal before the Commissioner (Appeals) by the appellants. The Commissioner (Appeals) while rejecting the contention sought to be raised on behalf of the appellants reduced the amount of duty taking into consideration the comparative cost price of the compounded rubber manufactured by the other industries, to the tune of Rs.64,413/-.

6. While assailing the impugned order, the learned Advocate appearing for the appellants submitted that the main contention of the appellant before the Commissioner (Appeals) was that compounded rubber is not a marketable product and therefore, it could not be stated to be excisable product, however, the Commissioner (Appeals) has not at all considered the same nor arrived at any finding on the said issue and therefore, the impugned order needs to be set aside and the matter to be remanded to the concerned authority to decide the said issue. Attention was sought to be drawn to the order dated 20.3.09 in Appeal No.775/04.

7. At the outset, it is to be noted that the Commissioner (Appeals) has enumerated the grounds on which the appellant sought to canvass before him and the same are enumerated in para 3 of the impugned order. The same merely refers to the issue of marketability of the product. However, in para 5 which relates to discussion and finding on the points which were sought to be raised by the appellant before the Commissioner (Appeals), it is recorded that "the cycles and cycle rickshaw tyres are manufactured in a continuous process by mixing reclaimed rubber/natural rubber and chemicals etc. and compounded rubber so manufactured during this process is not marketable as such". Undoubtedly, therefore, the said observation does disclose reference to the issue of marketability of the compounded rubber manufactured in the process of cycle and cycle rickshaw. The demand of duty was sought to be challenged but the same was on a specific ground that compounded rubber was a product which was manufactured during the continuous process of manufacture and therefore,

it was not marketable. Merely because the product was manufactured in the process of manufacture of another product , it cannot be said that such a product had to be classified as non-marketable product. The marketability of the product depends upon various factors including the mobility and utility of such product for different purposes. The impugned order does not disclose any other contention having been raised in relation to the issue of marketability of such product.

8. Even otherwise, the point is as to whether the compounded rubber can be said to be a marketable product or not, is already settled by the decision of the Tribunal which is sought to relied upon by the learned DR while contending that such product is marketable and therefore, it is excisable. The decision is in the matter of Ralson (India) Ltd. vs. C.C.E, Chandigarh I reported in 2003 (160) ELT 846 (Tri-Del.) wherein, after considering the various contentions and the relevant aspects of the matter as well as the test reports, it was held that a crucial evidence of chemical test report coupled with oral evidence of the Assistant Chemical Examiner and the assessee's admission of transporation and transportability of the product in question clearly distinguish the same from the rubberised fabric, besides that compounded rubber has much longer shelf life and even can be transported from one unit to another. The point that the compounded rubber is a marketable and therefore, excisable is well settled by the said decision of the Tribunal in Ralson (India) Ltd. case.

9. Apparently, the said decision was not brought to the notice of the Tribunal in Syndicate Tyres. Besides, a plain reading of the order dated 28.1.2009 discloses that in the facts and circumstances of the said case, it required certain evidence to be produced by the party and therefore, in order to afford an opportunity to the party to produce the evidence, the matter was remanded to the Commissioner (Appeals). By ordering the remand of the matter in the said case, the Tribunal did not lay down any proposition of law to the effect that moment a disputed question of fact is raised, that the matter should

necessarily be remanded to the lower authority. As already observed above, if the point is already settled by judicial pronouncement, there can be no justification for remand of the matter. Besides, in relation to the matter in hand in the facts and circumstances of the case, it does not require remand.

10. There is yet another reason to reject the contention raised by the learned Advocate for the appellant. It is a matter of records that they availed exemption from the liability in respect of the compounded rubber in terms of Notification No.152/87 dated 25.5.87. Further consequent to the Notification No.74/94 dated 20.3.94 the appellant again sought exemption from payment of excise duty on the said product. The question of seeking exemption can arise only after the product is admitted to be excisable one and thereupon the assessee can avail the benefit under an exemption notification. The question of exemption from liability of excise duty can arise only in case of excisable goods. In other words, the question of claiming exemption can arise only in the case of excisable goods which are specifically exempted from the duty liability under a notification. This would disclose that the appellants themselves were considering the compounded rubber to be excisable product and that is why they were claiming exemption. It was only because the time gap between two dates pertaining to the exemption notifications in the month of March, that the exemption was not available to the said product. The dispute relating to marketability of the product in the circumstances of the case is purely after thought. There was no change either qualitatively or otherwise in the resultant product manufactured in the factory of the appellant i.e. the compounded rubber during the period from 1.3.94 till 27.3.94. The product remained the same as it was prior to 1.3.94 or after 27.3.94. That is being undisputed fact, there is no scope for remand. The issue can be decided on the materials available on record and on the basis of undisputed facts. Being so, the order in Syndicate case is of no help to the appellant.

11. The attention was sought to be drawn to the decision in the matter of Everest Rubber Works vs. C.C.E, Calcutta II reported in 2000 (119) ELT 453 (Tri.). In Everest Rubber Works case was a decision on the point that for the purpose of classifying the product to be excisable product, the same should have marketability. The said point is well settled point and needs no further elaboration.

12. In the facts and circumstances of the case, as already observed above, the compounded rubber is a marketable product and therefore, no fault can be found with in the impugned order demanding duty in relation to the said product for the period for which the product did not enjoy the exemption from payment of duty. For the reasons stated above, the appeal fails and deserves to be dismissed and is accordingly dismissed

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/