CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court - I

Appeal No.	Appellant(s)	Respondent(s)	Impugned Order-in-Appeal
E/571/2010	CCCE & ST, Hyderabad - I	Amrutha International	104/2009 (H-I) CE dated 15.12.2009 passed by CCCE & ST (Appeals-I&III), Hyderabad
E/572/2010		Srikar Rubber Pvt Ltd	105/2009 (H-I) CE dated 15.12.2009 passed by CCCE & ST (Appeals-I&III), Hyderabad

Appearance:
Shri P.S. Reddy, Asst. Commissioner/AR for the Appellant.
Shri Y. Sreenivasa Reddy, Advocate for the Respondents.

Coram:
HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 29.10.2018
Date of Decision: 29.10.2018

FINAL ORDER No. A/31410-31411/2018

[Order per: P.V. Subba Rao.]

1. Both these appeals filed by the Revenue pertain to same issue and hence are being disposed of together.

2. The facts that fall for consideration are that the appellant herein is a manufacturer of vulcanised rubber tubes falling under chapter 40 of Central Excise Tariff Act and were paying duty accordingly. As per Notification No. 49/2008- CE (NT) dated 24.12.2008 amended by Notification No. 9/2010- CE (NT) dated 27.02.2010 certain goods were to be assessed to Central Excise duty based on the retail sale price as per Sec.4A of Central Excise Act. These goods included "parts, components and assemblies of automobiles". Since the tubes manufactured by the appellant fall under chapter 40 and not under chapter 87, they continued to pay duty as before and not under the notification read with Sec.4A of Central Excise Act. Show cause notice was issued on

16.05.2008 covering period 01.07.2007 to 31.05.2008 seeking to recover differential duty of Rs.32,33,013/- by calculating the duty under Sec.4A read with aforesaid notification. After following due process of law, the original authority confirmed the demand. On appeal, the first appellate authority set aside the Order-in-Original on the ground that there was a CBEC clarification to the effect that the tubes of automobiles are covered under Sec.4A read with the aforesaid notification. Such a clarification will only have prospective effect and cannot have retrospective effect. This appeal is filed by the revenue challenging the Order-in-Appeal on the following grounds.

(i) Board Circular F.No.167/38/2008-CX 4 dated 16.12.2008 referred to the impugned order by the first appellate authority was not in picture either in the show cause notice or in the Order-in-Original and hence the first appellate authority has travelled beyond the scope of the show cause notice.

(ii) The first appellate authority erred in not only relying on the Board Circular but also holding that Circulars have only prospective application.

3. The first appellate authority relied on the judgments of the Hon'ble Apex Court in the case of H.M. Bags Manufacturer [1997 (94) ELT 3 (SC)], Suchitra Components Ltd [2007 (208) ELT 321 (SC)], Mysore Electricals Industries Ltd [2006 (204) ELT 517 (SC)], S & S Power Switchgear Ltd [2003 (160) ELT 555 (Tri-Chennai)] and Jyoti Ltd [2008 (231) ELT 186 (Tri-Ahmedabad)]. It is the contention in the appeal that the aforesaid judgments are not applicable to the present case. The case of H.M. Bags Manufacturer (supra) is one where the demand was issued based on Board Circular issued under Section 37B of Central Excise Act re-classifying the goods and hence the Circular in that case also uses the word hence forth does not apply. In the case of Mysore Electricals Industries Ltd (supra) again the classification was an issue and a re-

classification was sought to be made. The remaining judgments and orders referred to were also on the same lines as the Mysore Electricals Industries Ltd. In this case Notification No. 2/2006 was the basis of the demand and not the Board Circular dated 16.12.2008. Board only issued a clarificatory circular and the demand was confirmed based on the notification. The first appellate authority erred in shifting the focus from the notification under which the demand was made to the Board circular and holding that it only applies prospectively.

4. Learned departmental representative asserts that the notification in question is not dependent on the classification of goods under any chapter of Central Excise Tariff Act. In fact the relevant entry specifically mentions "parts, components and assemblies of automobiles" falling under any heading. Hence, it is not necessary that the tubes in question should have fallen under Chapter 87 for this notification to be applicable.

5. Learned counsel submits that the first appellate authority has correctly passed the orders as there was a genuine doubt regarding the applicability of the notification during the relevant period as is evident from the text of the circular itself. Paras 3.1, 3.2 & 4 of the Circular No. 167/38/2008-CX4 dated 16.12.2008 read as follows:

> *"3.1 Another issue that has arisen is the scope of the term 'parts' as used in the aforementioned entry. Chapter 87 of the Central Excise Tariff covers parts of different vehicles. Further, Section Note 2 of the Section XVII also defines the scope of 'parts' of goods falling in said section. Doubts have arisen as to whether 'parts' classified in Chapter 87 shall only be covered under the said entry or all parts irrespective of their classification should be covered.*
> *3.2 The issue has been examined. The said entry provides that 'parts, components and assemblies' falling in any heading in the Tariff are covered. Therefore, it is logical that all 'parts, components and assemblies,' irrespective of their classification shall be covered. It is also important to note that there is no specific entry for 'components' or 'assemblies' of automobiles in the Tariff, therefore, this also supports the view that all goods which are commonly known and sold in the trade as 'parts, components and assemblies 'are covered by said entry, irrespective of their clarification in the Tariff.*
> *Hence, the term 'parts, components and assemblies' of automobiles includes items like batteries, brake assembly, tyres, tubes and flaps, IC engines, ball bearing, etc.*

> *4. The contents of this clarification may be brought to the notice of trade and industry."*

6. From the above it is evident that there was confusion among the trade and industry whether this notification applies to tubes or not. The first appellate authority was correct in holding that once the clarification is issued by the Board, it only has prospective effect and not a retrospective one. It is his further contention that the first appellate authority has also examined the matter on merits and has recorded his findings in Para 17 as follows:

> *"17. Therefore, I find that the Apex Court has referred to tyres as accessory to an automobile. Even as per the trade parlance, I find that there is a distinct and separate market for tyres and tubes and a separate market for parts and accessories of motor vehicles. Generally, a dealer in tyres and tubes of motor vehicles will not deal in parts and accessories of motor vehicles. It is doubtful that a tube will be referred to as a part in the automobile market. There is, thus, ambiguity in the scope of the expression 'parts, components and assemblies of automobiles' when dealing with goods like tubes which in the trade parlance, may not be commonly known as 'parts' of an automobile. It is perhaps on account of ambiguity in the scope of the expression that the matter was referred to the Board which has issued two clarifications as under: In F.No.6/14/2007-CX.1 dated 12th August, 2008, the Board has clarified the issue as under."*

7. He further relied on the case of J.K Tyre and Industries Ltd [2017-TIOL-2220-CESTAT-Delhi] in which Tribunal Delhi has categorically held that it is untenable to hold that tyres, tubes and flaps are to be considered as parts and components of automobiles and charge duty in terms of Sec.4A of Central Excise Act. The reason for this is that these tyres and tubes are used not only for automobiles but also for animal drawn vehicles, Aircrafts etc. and hence they cannot be considered as parts of an automobile. It is the contention of the learned Counsel that in their particular case most of their tubes were manufactured for tractors or ADVs and not for automobiles. Therefore, in view of the decision in the case of J.K Tyre & Industries Ltd they do not get covered by the notification.

8. We have considered the arguments on both sides and perused the records. The short point to be decided is whether the description of the goods, 'parts, components and assemblies of automobiles' in Notification No. 2/2006-

CE (NT) read with Notification No. 11/2006- CE (NT) includes tubes or not. Firstly, it is evident that as far as this notification is concerned, for parts of automobiles to be covered, they need not fall under chapter 87 and they can fall under any heading of the Tariff. The second question is whether tubes should be considered as parts of automobiles or otherwise regardless of the fact that they are covered under chapter 40 of the Central Excise Tariff. In the case of J.K Tyre & Industries Ltd (supra), it has been held that tubes and tyres cannot be considered as parts of automobiles because they are also used for animal drawn vehicles, aircrafts etc. We respectfully follow the decision in this case and hold that the tubes manufactured by the appellant cannot be called as parts of automobiles and therefore the Notification No. 2/2006- CE (NT) read with Notification No. 11/2006- CE (NT) prescribing Central Excise duty under Sec.4A based on RSP does not apply. As we have decided issue on merits, the retrospective applicability of the Circular or otherwise becomes irrelevant. As a result, the impugned orders dropping the demand need to be upheld and we do so.

9. The appeals are rejected and the impugned orders are upheld.

(Operative part of this order was pronounced in the Open Court
on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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