

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench - Court – I

CENTRAL EXCISE APPEAL No. 961 of 2009

(Arising out of Order-in-Original No. 12/2009(C.E.)-Commr. Dated 14.08.2009 passed by
Commissioner of Customs & Central Excise, Hyderabad-I Commissionerate)

T.M. Tyres Limited

5-35, Survey No. 319/321,
P.B.No. 102, Kalakal Village,
Medak District,
Telangana – 502 336.

..

APPELLANT

Vs.

Commissioner of Central Excise

Customs & Service Tax, Hyderabad-I
Kendriya Shulk Bhavan,
L.B.Stadium Road,
Basheerbagh,
HYDERABAD – 500 004.
Telangana

..

RESPONDENT

APPEARANCE:

Shri P. Bhaskara Reddy, Consultant for the appellant.

Shri C. Mallikharjun Reddy, Superintendent/AR for the respondent

**CORAM: HON'BLE Mr. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER No. A/30575/2020

DATE OF HEARING: 19.02.2020

DATE OF DECISION: 19.02.2020

[ORDER PER : MR. S.K. MOHANTY]

1. This appeal is directed against the impugned Order-in-Original No. 12/2009(C.E.)-Commr. dated 14.08.2009 passed by Ld. Commissioner of Customs & Central Excise, Hyderabad.

2. Briefly stated, the facts of the case are that the appellant herein is engaged in manufacture of Butyl rubber inner tubes, classifiable as excisable goods, under Central Excise Tariff Act, 1985. The appellant discharges central excise duty liability on the assessable value determined, under

Section 4 of the Central Excise Act, 1944. The Central Government vide Notification No. 2/2006-CE(NT), dated 01.03.2006 has notified certain goods, as the goods to which the provisions of Section 4A *ibid* shall apply. The said Notification was amended vide Notification No. 11/2006-CE(NT), dated 29.05.2006 in inserting "Parts, components and assemblies of automobiles" in order to fall under the provisions of Section 4A *ibid*. Based on the said notification, the department initiated show cause proceedings against the appellants to deposit the Central Excise Duty under Section 4A *ibid* based on the MRP rates. The matter was adjudicated by the impugned order dated 14.08.2009, wherein the Ld. Commissioner of Central Excise has confirmed differential central excise duty of Rs.78,64,344/- under section 11A of the Act along with interest and also imposed penalty of Rs. 2.00 lakhs under Rule 25(1) of the Central Excise Rules, 2002.

3. The Ld. Consultant appearing for the appellant submits that the issue arising out of the present dispute is no more *res integra* in view of the Final Order No. A/30414/2019, dated 21.02.2019 passed by this Tribunal in the case of Agarwal Rubber Limited. He also relied upon the decision of this Tribunal in the case of J.K. Tyre & Industries Limited vs. Commissioner of Central Excise, Indore as reported in [2018(2)TMI 611-CESTAT, New Delhi], to state that no differential duty liability can be fastened on to the appellants in terms of Section 4A of Central Excise Act, 1944.

4. On the other hand, Ld. Departmental Representative appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and examined the records.

6. The above Notification No. 2/2006-CE(NT), dated 01.03.2006 was amended by Notification No. 11/2006-CE(NT), dated 29.05.2006, by inserting a new entry at S.No. 97, which reads as "parts, components and assemblies of automobiles". It is an admitted fact on record that the appellant is engaged in the manufacture of Butyl rubber inner tubes and such product by itself is separately identifiable and is a distinct Marketable

product. It cannot be said that the product manufactured by the appellant is exclusively meant for the automobile industries for use as parts and components and are not capable for use in other purposes. Since the goods manufactured by the appellant are meant for use by other manufacturers also, in our opinion, such manufactured goods cannot be subjected to levy of central excise duty under Section 4A of the Central Excise Act, 1944. We find that the issue arising out of the present dispute is no more open for any debate in view of the decisions relied upon by the Ld. Consultant for the appellant. The Tribunal in the case of J.K. Tyre Industries Limited (supra), by placing reliance on the judgment of Hon'ble Supreme Court in the case of G.S. Auto International Limited vs. CCE Chandigarh, as reported in [2003(152)ELT 3 (S.C.)] and CCE Vs. Wockhardt Life Sciences Limited as reported in [2012(277)E.L.T. 299 (S.C.)] has held that the common parlance theory should be applied in order to ascertain whether the particular commodity is falling under specific entry either under the tariff or any notification issued by the Central Government. The relevant paragraph in the said order is extracted herein below:

"3. We note that the Original Authority vide his order dated 10/09/2009 has given a very cryptic finding to the effect that in terms of decision of Hon'ble Supreme Court in the case of G.S. Auto International Ltd. vs. CCE, Chandigarh reported in 2003 (152) E.L.T. 3 (S.C.), the classification of goods is to be determined by commercial identity test and not by functional test. Accordingly, he held that tyres, tubes and flaps have "the identity with automobiles and prove themselves to be part of automobile". We have perused the said decision of the Apex court. The said decision dealt with various types of automobile parts having fastening function. The Apex court examined the general use parts and the scope of classification of these items. It is categorically held that for classification, the test of commercial identity and not the functional test should be applied. It needs to 3 EX/3069 of 2010 be ascertained as to how the goods, in question, are referred to in the market by those who deal with them, be it for the purposes of selling, purchasing or otherwise. Similarly, in CCE vs. Wockhardt Life Sciences Ltd. reported in 2012 (277) E.L.T. 299 (S.C.), the Hon'ble Supreme Court reported that whether a particular article will fall within a particular tariff heading or not has to be decided on the basis of tenable, material or evidence to determine how such article is understood in "common parlance" or in "commercial world" or in "trade circle" or "in its popular sense meaning". Similar views have been expressed by the Apex court in CCE, New Delhi vs. Connaught Plaza Restaurant (P) Ltd. reported in 2012 (286) E.L.T. 321 (S.C.) and Commissioner of Trade Tax, U.P. vs. Kartos International reported in 2011 (286) E.L.T. 289 (S.C.) dealing with a sales tax matter the Hon'ble Supreme Court in United Copiex (India) Pvt. Ltd. vs. Commissioner of Sales Tax reported in 1997 (94) E.L.T. 28 (S.C.) held that rubber flaps cannot be classified as accessories of motor vehicles. The court also refer to Central Excise Tariff Act and mentioned that flaps are taxable under Tariff Heading 4012".

7. In view of the above, we find substance in the submissions of the appellant that the duty liability cannot be fastened on it under Section 4A of the Act. Accordingly, after setting aside the impugned order, we allow the appeal in favour of the appellant.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
(MEMBER (JUDICIAL))

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

vrg