(1984) 02 BOM CK 0074

In the Bombay High Court

Case No : Writ Petition No. 1139 of 1980

Amartara Limited, Bombay APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 27-02-1984

Acts Referred:

Citation : (1989) 39 ELT 523

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. This petition concerns the classification for Excise purposes of "rigid grade PVC non-adhesive tape" manufactured by the Petitioners in four colours.

2. In May 1971, Item 59 was introduced in the Schedule to the Central Excises and Salt Act, 1944. It reads thus :

" Tariff Item Description Rate of duty. 59. Electric Insulating tapes, in or 10% ad valorem." in relation to the manufacture of which any process is ordinarily carried on with the aid of power. 3. On 19th June, 1971 a trade notice was issued by the Bombay Central Excise Collectorate which stated that electric insulating tape was impregnated or coated with insulating compounds used for covering joints in, and open ends of electric wires and cables. Such tape might have for backing textiles, cellulosic film or paper. It was liable to Excise duty under Item 59.

4. On 17th April, 1972 the Petitioners wrote to the Superintendent of Central Excise stating that they had started manufacture of non- adhesive tapes which, they claimed, fell outside the Central Excise Tariff. They sent a sample and asked the Superintendent to confirm that these tapes could be cleared without following Central Excise formalities. On 28th June, 1972 the Superintendent informed the Petitioners that the sample had been sent to the Deputy Chief Chemist for his opinion and that he had opined that the tape was composed of polyvinyl chloride and was free from any adhesive material. On 1st December,

1972 the Petitioners sent a classification list to the Excise authorities showing the tapes as non-excisable and sought approval. There was no reply or intimation of disapproval from the Excise authorities.

5. On 15th January 1974 the Excise authorities issued to the Petitioners a notice alleging that the Petitioners had manufactured and cleared without payment of Excise duty heat-sealing tape, PVC, and heat-sealing tape, polythene, and called upon them to show cause why they should not be made to pay Excise duty on past clearances. On 30th January 1974 the Petitioners showed cause and contended that they had never manufactured or sold heat-sealing polythene tapes. As regards heat-sealing PVC tapes, the Petitioners had only produced some samples, which had been distributed among their customers, but which had, subsequently, not been manufactured.

6. On 26th June 1974 the Assistant Collector held that, since the Petitioners'' tapes were used for insulating purposes, and it was not material that they were used also for identification or other purposes, they were excisable under Item 59. On 6th September 1974 the Petitioners preferred an appeal. On 7th April 1975 an order was passed in appeal remanding the matter for adjudication upon the ground that the Petitioners had not been supplied with a copy of the market enquiry report.

7. On 19th May 1976 the Excise authorities informed the Petitioners that the market enquiry report was based on tapes made by manufacturers other than the Petitioners since the Petitioner''s tapes were not available in the Bombay market. On 28th May 1975 the Petitioners informed the Excise authorities that their tapes were dissimilar to those in respect of which inquiries had been conducted and that the results of such inquiries were not applicable to their case.

8. The Petitioners were accorded a personal hearing. They produced a letter from Messrs. Larsen & Toubro Limited which stated that the sample roll of Rigid grade P.V.C. non-adhesive tapes sent to them by the Petitioners, along with its specification, had been found unsuitable for any of their applications. They were using only flexible grade PVC non-adhesive tapes for heat-sealing or taping of electrical bus bars and links. The Petitioners also produced a letter from Hindustan Cables Limited offering an explanation for the use of the petitioners'' tapes. The letter stated that the rigid grade of PVC tape was used by Hindustan Cables Limited for identification of coaxial cable cores used for telecommunication purposes. The letter went on to state, "The secondary use of the PVC tape is of course insulation of the coaxial cores at low voltage." An extract of an Indian Standards Institute publication was also produced which stated under the heading "Insulating Tape", "Pressure sensitive electrical insulating tapes with PVC substrates shall be coated uniformly on one side with a suitable adhesive composition requiring no moisture, heat, or other special preparation prior to application." The Petitioners also produced various trade inquiries for electrical insulating tape which the Petitioners had not been able to fulfil.

9. On 6th November 1975 the Assistant Collector passed an order upholding the show cause notice. He noted that in substantiation of their arguments on the point of fact, the Petitioners had stated that even according to their main consumer, viz., Hindustan Cables Ltd., the use of their rigid tape as an insulating tape was only secondary. It was argued that the insulating tape manufactured by the Petitioners could not be used for high or medium voltage insulating tapes. It had been conceded by the Petitioners that the rigid grade PVC tapes (non-adhesive) manufactured by them could be used as an insulating tape for low voltage insulation. This was confirmed by letters received from Hindustan Cables Ltd. and Bush India Ltd. The item merely mentioned "electric insulating tape." The description by itself did not state that the tapes covered under it were used for medium or high voltage insulation. The restrictive interpretation given by the Petitioners was not, therefore, correct since the Schedule itself had placed no such restriction.

10. The petitioners preferred an appeal, which was rejected on 27th February 1976. Here also it was noted that it was an undisputed fact that the tape was used by the two customers to whom it was supplied by the Petitioners, and it was clear that the entire production was supplied by the Petitioners to only those two customers, for electric insulation purposes. It was, therefore, held that the tape was covered by Item 59.

11. The petitioners then filed a revision application, which came to be rejected on 22nd May 1980 upon the question of classification. The order noted that it was an admitted fact that the tapes manufactured by the Petitioners were capable of being used as electric insulating tapes, though for insulation against low voltage only. If the product had been used as electric insulating tape, the fact of secondary use or predominant use became irrelevant.

12. This petition filed on 2nd October, 1980 impugns the correctness of the three orders.

13. It was contended by Mr. Madon, learned counsel for the Petitioners, that the primary purpose for which the petitioners'' tapes were used was for identification and binding of cables and that the insulation of coaxial cores at low voltage was a mere secondary use. In his submission, for the purpose of classification, the primary purpose alone could be taken into account. My attention was drawn by him to the judgment of the Supreme Court in Annapurna Carbon Industries Co. Vs. State of Andhra Pradesh, . This was a case under the sales tax laws. The question was whether "arc carbons" fell under an item which classified "cinematographic equipment including cameras, projectors and sound recording and reproducing equipment lenses, films and parts and accessories required for use therewith." The taxing authorities concluded that the common or ordinary use of arc carbons was that they exuded the powerful light cast, through the projectors, on cinema screens. The Court observed that the deciding factor was the predominant or ordinary use. It was not enough to show that the article could be put to other uses also. It was its general or predominant user which

seemed to determine the category in which an article would fall. The fact that the arc carbons could also be used for search-lights, signalling, stage lighting or where powerful lighting for photography or other purposes might be required could not detract from the classification to which the carbons arcs belonged. That was determined by their ordinary or commonly known purpose or user. This was evident from the fact that they were known in the market as cinema arc carbons.

14. In the instant case the entry is specific, for electric insulating tapes. The Petitioners'' tapes are used in the transmission of electricity. They have the property of insulation. They must be held to fall within the coverage of the entry. That the tapes are made in different colours enables their use for identifying cables, but this does not, in my view, affect their classification. The question of primary or secondary use does not, in these circumstances, arise.

15. My attention was drawn to a judgment of this court in 1980 E.L.T. 3, Deepak & Co. v. Central Excise, where the Excise authorities had contended that to fall within Item 59 the tape had to be cotton insulating tape and not plastic tape. That the Excise authorities at one time placed this interpretation upon the entry does not alter its plain meaning. Similarly, the fact that the trade notice describes tapes that fall under Item 59 does not exclude other tapes from so falling if they are capable of use as electric insulating tapes.

16. In the result, the petition is dismissed with costs. Rule discharged.

