(1993) 03 GAU CK 0007

In the Gauhati High Court

Case No : Civil Rule No. 1500/89 and 41 others

Arunachal Forests Products Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 23-03-1993

Acts Referred:

Citation : (1993) 66 ELT 345

Hon'ble Judges : U.L. Bhat, C.J;R.K. Manisana, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, S.K. Senapati, B. Banerjee, R. Gogoi, M.M. Rahman, M. Hazarika, H. Roy, A.K. Maheswari, A. Bhattacharyya, A.K. Saraf, S. Mitra, A. Devi, D.C. Sarma, S.K. Kejriwal, A. Dutta and B.J. Ghose, for the Appellant; Sk. Chand Mohammad, Sr. Central Govt. Standing Counsel, R.P. Kakoti, Addl. C.G.S.C. and K.N. Choudhury, Addl. C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd., (1995) 50 ECC 122 : (1995) ECR 417 : (1995) 77 ELT 23 : (1995) 3 JT 207 : (1995) 2 SCALE 364 : (1995) 3 SCC 454 : (1995) 2 SCR 797

U.L. Bhat, C.J.—The dispute projected in these writ petitions relates to the correct classification and entry relating to Block Board manufactured by the petitioners. According to the petitioners, Block Board manufactured by them falls under entry 4410.90 in Chapter 44 of the Central Excise Tariff Act, 1985 (for short, the 1985 Act), while according to the Department the same falls under entry 4408.90.

2. Civil Rule Nos. 1500/89, 1666/89, 1668/89, 246/90, 1594/90 and 362/90 relate to the period prior to 19-3-1990 while other writ petitions relate to the period falling within the period beginning from 20-3-1990 to 28-2-1992.

3. Levy of excise duty prior to 28-2-1986 was governed by the provisions of 1st

Schedule to Central Excises and Salt Act, 1944 (for short, the 1944 Act). Relevant portion of Item 16(B) of the 1st Schedule read as follows :-

"WOOD and articles of wood, the following namely :

Plywood, Block Board (including flush doors), Thirty per cent Lamin Board, Batten Board, hard or soft wall ad valorem. boards or insulating board and veneered panels, whether or not containing any material other than wood : cellular wood panels, building boards or wood pulp...".

No other entry in the first schedule of the 1944 Act took in any other type of articles of wood. Entry 16(B) was the only entry relating to articles of wood. Entry 68, the residuary clause, related to "all other goods, not elsewhere specified..." the duty being 12% ad valorem. It is therefore crystal clear that under 1944 Act Block Board of any type or description and irrespective of the manufacturing process adopted fell under entry 16(B) along with plywood, Lamin Board, Cellular Wood Panels etc.

4. The 1985 Act came into force with effect from 28-2-1986. Relevant entries in Chapter 44 of the Act dealing with wood and articles of wood, as they originally stood were :

44.08 Plywood Veneered panels and Similar laminated wood.

****** ****** 4408.90 Others 30%.

44.10 Articles of wood not elsewhere specified.

****** ****** 4110.90 Others 12%

Controversy arose between manufacturers and Excise authorities regarding the entry applicable to Block Board, whether it was 4408.90 or 4410.90. Some of the manufacturers filed appeals before the Collector of Appeals, Calcutta and ultimately before the CEGAT, CEGAT by judgment dated 18-10-1989 in 1992 (60) ELT 668 upheld the contention of the manufacturers that entry 4410.90 was applicable on the ground that Block Board is not laminated wood as understood in the commercial sense and according to the specifications of the Indian Standards Institution and, therefore, did not fall under the heading "similar laminated wood" in entry 44.08 and would fall under residuary entry 4410.90 in the absence of any contra evidence adduced by the Department to show that Block Board is known in the trade as laminated wood similar to plywood and veneered panels. We are told that an appeal against the judgment is pending in the Supreme Court. Six writ petitions in this batch relate to the period when the relevant entry stood as mentioned above and are covered by the CEGAT judgment.

5. The Finance Act, 1990 amended Chapter 44 of the Tariff Act in certain respects. Notes 5 and 6 were renumbered as Notes 6 and 7 respectively and the following Note was inserted as Note 5 :

"For the purpose of Heading No. 44.08 the expression ''similar laminated wood'' includes block board, lamin board and batten board, in which the core is thick and composed of blocks, laths or battens of wood glued together and surfaced with the outer plies and also panels in which the wooden core is replaced by other materials such as layer or layers of particles Board, fibre board, wood waste glued together, asbestos or cork."

(Emphasis supplied)

Tariff relating to entry 4410.90 was changed to 15%. The statement of objects and reasons of the Finance Bill, 1990 indicated that it was proposed to introduce a new chapter Note to provide a definition of "similar laminated wood". The Excise authorities once again took the view that the duty leviable on Block Board was under entry 4408.90 and not entry 4410.90 and the manufacturers persisted in their contention that 4410.90 was applicable. This dispute arises in these writ petitions except the six referred to in paragraph 2 supra.

6. The 1985 Act was further amended by the Finance Act, 1992. Note 5 of Chapter 44 was amended substituting the words "glued or otherwise joined together" for the words "glued together". The amended Note 5 reads as follows :-

"For the purpose of Heading No. 44.08 the expression ''similar laminated'' include block Board, lamin Board and batten board, in which the core is thick and composed of blocks, laths or battens of wood ''glued or otherwise joined together'' and surfaced with the outer plies and also panels in which the wooden core is replaced by some other materials such as layer or layers of particles board, fibre board, wood waste glued together, asbestos or cork".

(Emphasis supplied)

The excise authorities took steps to classify Block Board manufactured by these manufacturers under entry 4408.90 for the year 1992. This led to a batch of writ petitions including Civil Rule No. 833/92 which was dismissed by one of us (Hon''ble Manisana J.) and the dismissal was confirmed by a Division Bench consisting of one of us (Chief Justice) and Baruah J. in Writ Appeal No. 11 of 1993 and other writ appeals.

7. The six writ petitions in the present batch referred to earlier have to be decided on the basis of the provisions of 1985 Act as they stood before the amendment in. 1990. Entry 44.08 related only to "Plywood veneered panels and similar laminated wood". It is common ground that Block Board involved in these cases is not plywood or veneered panel. According to the Department, it is "similar laminated wood". The provision under consideration in these six cases does not contain any definition of "laminated wood", or of "Block Board". Therefore, the correct guide for understanding is the text, context and the trade meaning which is prevalent in the particular trade where these articles are known, in the absence of any evidence either way. There is nothing in the provision to indicate that legislature intended any particular technical meaning to

be assigned to "laminated wood." We have to consider the meaning attached to these words in the particular trade. For this purpose we can look into the description or classification given by the Indian Standards Institution, Glossary of Terms published by the I.S.I. states :-

"Laminated Wood : An assembled product made up of layers of wood and adhesive in which the grains of adjacent layers are parallel. Lamin Board : A Board having a core of strips, each not exceeding 7 mm in thickness, glued together face to face to form a slab which in turn is glued between two or more outer veneers, with the direction of the grain of the core strips running at right angles to that of the adjacent outer veneers".

"Block Board : A board having a core made up of strips of wood, each not exceeding in width, laid separately or glued or otherwise joined to form a slab which is glued between two or more outer veneers with the direction of the grain of the core blocks running at right angles to that of the adjacent outer veneers".

(Emphasis supplied)

8. The meaning given in the Glossary of Terms can in the absence of other evidence, be regarded as reflecting the sense in which the particular trade understands the names. Going by the meaning in the Glossary for the various names there can be no doubt that Block Board is something totally different from Plywood or laminated wood, as understood in the commercial sense or in the particular trade. Block Board has no similarity to laminated wood. Legislature could not have intended to include "Block Board" also within the meaning of the words "similar laminated wood." When the 1985 Act was enacted, Legislature had before it the entries contained in entry 16(B) of the 1944 Act which specifically referred to Plywood, Block Board, Lamin Board, Batten Board, Veneered Panels etc. Nevertheless the legislature deliberately omitted any reference to "Block Board" in entry 44.08 in the 1985 Act. This is another indication in support of the conclusion that Block Board cannot fall under the category of "similar laminated wood" in entry 44.08 in the 1985 Act. We therefore uphold the contention of the petitioners in the six writ petitions referred to above that Block Board manufactured by them does not fall within the entry 4408.90 but falls under the entry 4410.90 as the entry stood in 1989.

9. We now turn to the effect of Note 5 introduced by the Finance Act, 1990. Note 5 provided in an inclusive definition of the words "similar laminated wood". According to this inclusive definition, the expression "similar laminated wood", in so far as it is relevant for the purpose of these case, included Block Board in which core is composed of strips of Block of wood glued together. There is no controversy regarding the rest of the definition. The controversy relates to the meaning of the words "glued together". Even going by "Glossary of Terms" issued by the I.S.I. Block Board must have a core made up of strips of wood, laid separately or glued or otherwise joined together to form a slab and this slab must be glued between two or more outer veneers. In the judgment in Writ

Appeal No. 11 of 1993 and connected appeals this Court has pointed out that there are differences in the meaning given in the Glossary of Terms and in the description given in Note 5. Note 5 did not include Block Board as such, it includes only Block Board in which core is composed of strips of wood glued together. The Legislature must have a purpose in giving the explanatory description of this nature. The Legislature did not say that "similar laminated wood" included Block Board. There is no dispute that Block Board can be manufactured by different processes. Whatever be the process adopted, the common factor is that Block Board is "made up of strips of wood". The difference in the process lies in the manner in which the blocks of wood are kept or connected together. In the Judgment in the Writ Appeals this Court noticed the three different kinds of processes referred to by I.S.I., namely, (i) glueing blocks of wood together, that is, applying glue artificially in between every set of two adjacent Blocks, (ii) laying them separately and (iii) otherwise joining them together, and came to the conclusion that the core or slab is formed even where blocks of wood are laid without applying glue between every set of adjoining blocks or without connecting every set of adjoining blocks by metal fastener or the like and are merely laid in between outer veneers in which the inner surface is applied with glue and pressure is applied; and such core or slab is one in which blocks of wood can be said to be "joined together." This Court held that where no artificial means by way of glue or metal fastener is used to hold the Blocks together and where the Blocks of woods are separately laid, they are "otherwise joined together" to form a slab. Therefore, it was held that such Blocks Board would fall under Entry 4408.90 in the light of Note 5 as amended by Finance Act, 1992.

10. In the Note 5 introduced by the Finance Act, 1990 the words "otherwise glued or joined together" were absent. Note 5 therefore took in only Block Board in which the core is composed of blocks of wood "glued together". The purpose of an inclusive definition may be either to enlarge the meaning of the words so as to take in the ordinary, popular and natural sense of the words or to include within its meaning something about which there might be any dispute or to bring under the heading items having similar features but going by different names. What is the purpose sought to be achieved in a given case depends on the text and context, see Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others,

11. The purpose of the inclusive definition in Note 5 was definitely to enlarge the meaning of the words "similar laminated wood", as without the definition these words will not take in Block Board. There is no controversy about this aspect. The controversy is whether by using the words "glued together" the Legislature intended to include Block Board where the core is formed of blocks of wood which are not glued together or which are not fastened together or which are laid separately. Construing the words "glued together" in the setting in which they occur and attributing their natural and ordinary meaning to the words, the only conclusion could be that the words will apply only if Blocks of wood are put

together by using adhesive or glue in between. The word "glue" cannot, as suggested on behalf of the Department, be given the wider meaning which it may have when used in a sentence like this :- ''Eyes are glued to the television.'' It is obvious that the eyes are not glued but the sight is glued to the television. The words used in the context indicate a figure of speech. It is not possible to read a figure of speech in fiscal legislation. Ascribing their natural meaning, in the particular context, the words "glued together" must take in only those cases where every set of adjoining blocks are put together by applying glue or adhesive in between them. It must follow that in Block Board where the core is formed by merely placing blocks of wood in between veneer sheets, in the inner surface of which glue is applied cannot fall within the inclusive definition given in Note 5 introduced by the Finance Act, 1990.

12. This view is also supported by the legislative exercise conducted in the Finance Act, 1992 by adding the words "otherwise joined together" for the purpose of enlarging the scope of the inclusive definition,

13. In these circumstances we hold that as Note 5 stood at the relevant time it did not attract Block Board manufactured by the Petitioners. The Block Board manufactured by the petitioners fell only in Entry 4410.90.

14. We allow the writ petitions directing the respondents to classify the Blocks Board manufactured by the petitioners on the basis of the above conclusions. Parties will bear their costs.

