(1993) 10 CAL CK 0009

In the Calcutta High Court

Case No : Matter No...of 1993

Bajoria Rubber Industries Ltd. APPELLANT

Vs

Collector of C. Ex. RESPONDENT

Date of Decision : 05-10-1993

Acts Referred:

Citation : (1994) 70 ELT 169

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : Ranjan Deb, Shyamal Sarkar, Jishnu Saha and Bidyut Dutta j, for the Appellant;N.C. Roychowdhury and Sadhan Roychowdhury, for the Respondent

Judgement

Ruma Pal, J. 1. The petitioners, inter alia, manufacture vacuum hoses. The petitioners had been clearing the hoses under the Tariff sub-heading 4009.92 of Chapter 40 of Schedule-II to the Central Excise Tariff Act of 1985. The Tariff sub-heading 4009.92 reads as follows :-

"Designed to perform the function of conveying air, gas or liquid."

Under this sub-heading 30% Duty was leviable.

2. According to the petitioners, the vacuum hoses, manufactured by them, are in fact, vacuum brake hoses and are supplied to the Railway Authorities for the purpose of functioning as vacuum brake or as parts thereof. In fact, the petitioner-Company is registered with the Railway Authorities, inter alia, for supply of vacuum brake hose pipes. According to the petitioners, there are limited suppliers of vacuum brake hose pipes to the Railways in the country. Of the 11 such suppliers, most are Small Scale Industry and are by virtue thereof exempted from payment of Excise Duty. The petitioner-Company is not a Small Scale Industry. One of the rivals of the petitioners in this trade, called M/s. Rubber Products Pvt. Ltd., is also not a Small Scale Industry. M/s. Rubber Products Pvt. Ltd. carries on business in the State of Maharashtra. M/s. Rubber Products Pvt. Ltd. had also been clearing its vacuum hoses under sub-heading

4009.92. It submitted a revised classification list for re-classification of the vacuum hose pipes under sub-heading 4009.99, of the schedule to the 1985 Act. Sub-heading 4009.99 is the residuary sub-heading. The rate of Duty is nil. The application for re-classification, made by M/s. Rubber Products Pvt. Ltd., was rejected by the Assistant Collector, Thane. An appeal was preferred by M/s. Rubbar Products Pvt. Ltd. before the Appellate Collector. After hearing the parties, the Appellate Collector came to the conclusion that a vacuum brake hose was properly classifiable under sub-heading 4009.99 and not under 4009.92. This decision of the Appellate Collector appears to have been delivered in 1988. On the basis of the decision of the Appellate Collector, M/s. Rubber Products Pvt. Ltd. applied for refund of the Duties paid by it at 30% under sub-heading 4009.92. The refund application was disallowed. M/s. Rubber Products Pvt. Ltd. filed a writ application before the Bombay High Court. The Bombay High Court allowed the writ application of Rubber Products Ltd. Vs. Union of India, . The Bombay High Court held that the order of the Appellate Collector was final and that the respondent-Authorities were bound to refund the amount paid by M/s. Rubber Products Pvt. Ltd. under sub-heading 4009.92. It appears from the judgment that the order of the Appellate Collector had been appealed from by the respondent-Authorities before the Tribunal; but the Tribunal dismissed the appeal preferred by the Excise Authorities on the ground that it was barred by Laws of Limitation.

3. Coming to know of the decision of the Appellate Collector from the reported judgment of the Bombay High Court, the petitioners filed a revised classification list before the Assistant Collector and prayed for re-classification of the vacuum hoses manufactured by them under sub-heading 4009.99. The decision of the Bombay High Court was referred to by the petitioners.

4. In my view, there can be no doubt that the Excise Authorities in Bengal are found to act in consonance with the decision of the Appellate Authority in Bombay. Otherwise, this would lead to discrimination between M/s. Rubber Products Pvt. Ltd. and the petitioners. The Excise Authorities in Maharashtra have accepted the re-classification of M/s. Rubber Products Pvt. Ltd.'' s vacuum hoses under sub-heading 4009.99. This acceptance may have been a forced one, but nevertheless, is the one that is being abided by. As a result, M/s. Rubber Products Pvt. Ltd. is not paying any Excise Duty on its products. If the petitioners are manufacturing the same product as that of M/s. Rubber Products Pvt. Ltd., the Excise Authorities in Bengal cannot foist the petitioners with the liability to pay Excise Duty under sub-heading 4009.92. This view is supported by several Judicial Authorities, namely, (1) Mercantile Express Co. Ltd. Vs. Assistant Collector of Customs and Others, (2)" Godrej and Boyce Manufacturing Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, , (3) Sandip Agarwal Vs. Collector of Customs, , and (4) Suhrid Giegy Ltd. Ahmedabad Vs. Union of India and Others, .

5. The Assistant Collector in this case by the impugned order has sought to

distinguish the decision of the Appellate Collector in M/s. Rubber Products Pvt. Ltd.''s case by stating that the vacuum hoses manufactured by the petitioners were not the same as the vacuum hoses manufactured by M/s. Rubber Products Pvt. Ltd. The observation of the Assistant Collector appears to be somewhat contradictory to his own finding in paragraph 2 of the impugned order. However, in my view, the question should be resolved finally by the fact finding Appellate Authority.

6. Accordingly the writ application is disposed of by granting liberty to the petitioners to prefer an appeal before the Appellate Authority from the impugned order dated 22nd July, 1993 passed by the Assistant Collector. As the matter has been pending adjudication before this Court, the question of limitation does not arise.

7. The Appellate Authority will only consider whether indeed the petitioner''s vacuum hoses are the vacuum brake hoses as contended by them. The petitioners will be at liberty to produce all evidence before the Appellate Collector.

8. If the Appellate Collector finds that the vacuum hoses, manufactured by the petitioners, are vacuum brake hoses, the Appellate Collector will allow re-classification, as sought for by the petitioners, with effect from the date of filing of the Revised Classification List. In that event, all payments made by the petitioners to the respondent-Authorities subsequent to the filing of the Reclassification List as well as the payments made by the petitioners to the Special Officer pursuant to the interim order of this Court must be refunded to the petitioners within a week from the date of the Appellate Collector''s decision.

9. The Appellate Collector will dispose of the matter within a period of 4 weeks from the date of communication of the Dictated Order to him. The Appellate Collector must give a notice of hearing to the petitioners. At least 48 hours clear notice must be given. The Appellate Authority will give reasons for its decision.

10. Subject to the petitioners furnishing a Bank Guarantee for an amount of Rs. 5,00,000/- representing approximately the Duty payable on the basis that the petitioner''s vacuum hoses are classifiable under sub-heading 4009.92 within a period of 4 weeks from date, the Excise Authorities will allow the petitioners clearance of the vacuum hoses without payment of any Duty.

11. The Bank Guarantee to be furnished by the petitioners in favour of the Collector of Central Excise, Calcutta-II, Collectorate, must be of a Nationalised Bank and must be kept renewed by the petitioners pending disposal of the matter by the Appellate Collector. The Bank Guarantee must also contain a clause to the effect that in the event the petitioners fail to renew the Bank Guarantee, the Bank will of its own and forthwith deposit the entire guaranteed amount with the Collector of Customs.

12. In the event the Appellate Collector decides against the petitioner, no steps will be taken to enforce the Bank Guarantee for a period of 2 weeks from the

date of such decision.

13. There will be no order as to costs.

14. All parties concerned including the Appellate Collector and the Branch Manager of the concerned Bank are to act on a signed copy of this Dictated Order on the usual undertaking.