
(1989) 07 CAL CK 0022
In the Calcutta High Court
Case No : C.R. No. 736 (W) of 1981

Bengal Waterproof Works Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 31-07-1989

Acts Referred:

Central Excise Rules, 1944 — Rule 173, 173B, 233

Citation : (1989) 44 ELT 406

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Goutam Chakraborty, for the Appellant; Sunil Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Susanta Chatterji, J.—The present Rule was obtained by Bengal Water Proof Works Limited & Anr. praying inter alia for issuance of a Writ of Mandamus commanding the respondents to show cause as to why the classification of the rubber-sheet manufactured by the petitioners as approved by the respondent No. 4 the Assistant Collector of Central Excise, Calcutta-VI Division being No. 1/79 dated 16th August, 1980 with regard to rubber-sheets combined as cotton textiles and No. 1/80 dated 13th March, 1980 with regard to rubber-sheets combined with man-made fabrics should not be treated as a final classification of the said rubber-sheet and for further direction of disposal of the petitioners" several applications for refund of excess duty realized from them and for cancelling the directions of the respondents as contained in the letter No. C-37 dated 7th January, 1981 issued by the Superintendent of Central Excise and the communication dated 20th of January, 1981 of the Inspector of Central Excise, Range-V, Calcutta-IX Division and all proceedings thereto. It is alleged that of the several products manufactured by the Bengal Water Proof Works Limited, the petitioner No. 1, rubber-sheeting is manufactured of different qualities according to the purpose of the use. There are plain rubber-sheetings which are made

entirely on rubber and there are also rubber-sheetings combined with other textile materials such as "cotton textiles", "rayon" or "nylon textiles" and other textiles flax and hem. It is also stated that the proportion of rubber is used in these sheetings varies from product to product and depends upon the end use of the same. According to the petitioners some of the rubber-sheetings are sold directly for use in hospitals, nursing homes and for laying below the bed of invalid ailing persons. Such commodities are known in the trade and by the consumers as rubber goods and are not known as textiles. It is alleged that some of the respondents have been wrongfully attempting to classify the petitioners' products under the "Cotton Fabric" as contemplated in Entry No. 19 of the First Schedule to the Central Excises and Salt Act, 1944 with a view to claim excise duty from the petitioners in respect of the products of the petitioner No. 1 particularly with regard to those relating to rubber-sheetings. According to the petitioners, the rubber-sheeting manufactured by Bengal Water Proof Works Limited is properly classifiable under Item No. 16A(2) and it would be incorrect and wrong but classify the same in Item No. 19 of the First Schedule to the Central Excises and Salt Act, 1944.

2. The petitioners contend that a change was brought as to the definition of "cotton fabric" in the Tariff description and was restricted to cotton fabrics only and did not extend to any processing. In view of the said change on definition of cotton fabrics, the petitioners protested against the realization of excise duty on rubberised fabrics but in view of the Notification No. 39/68-Central Excise, dated 1st March, 1968 the petitioners were subjected to payment of Central Excise duties. The petitioners had to pay the same under protest.

3. Stating all these facts in details, the petitioners have come to this Writ Court on the ground that the classification of goods in accordance with any Tariff Item can only be approved in accordance with the procedure laid down in Rule 173 of the Central Excise Rules, 1944 by Proper Officer as contemplated therein. The classification of goods can only be approved in accordance with the procedure laid down in Rule 173B of Central Excise Rules, 1944 and in relation to rubber-sheeting manufactured by the petitioners, the same can only be done by the respondent No. 4 the Assistant Collector of Central Excise. The grievance of the petitioners is that the respondent No. 7 the Superintendent of Central Excise being obliged to accept the classification made by the respondent No. 4 the Assistant Collector of Central Excise with regard to rubber-sheeting manufactured by the petitioners, was not entitled in law to depend upon the Trade Notice No. 6/Rubber Cotton Fabrics-I/81 dated 8th January, 1981 issued by the respondent No. 3 the Collector of Central Excise, Calcutta and he was (not?) entitled in law to give any direction as contained in the letter No. C-37 dated 17th January, 1981.

4. The learned Counsel for the petitioners has argued that Rule 233 of the Central Excise Rules, 1944 cannot classify or alter the classification of the Item in the First Schedule to the Central Excises & Salt Act, 1944 as they formed part of

the statute. He has argued further that the requests and directions contained in the letter No, C-37 dated 17th January, 1981 of the respondent No. 7 to the petitioner No. 1 and those of the Inspector, Central Excises, Range-V, Calcutta-IX Division dated 20th January, 1981 are of no consequence and are illegal. He has laid much emphasis upon the fact that the rubber-sheeting manufactured by the petitioners is composed of more than one material or substance viz. Rubber Chemicals and textiles and classification could not be made having due regard to major constituent being rubber in relation to rubber-sheeting and such major constituent could not be ignored in making the classification. There is further argument that the Notification No. 39/68-Central Excise, dated 1st March, 1968 having been withdrawn by Notification No. 101/79-Central Excise and the Budgetary Note made by the respondent No. 2 proving that in view of the changes in Tariff relating to cotton fabrics in the 1977 Budget, rubberised cotton fabrics as described in the said notification dated 1st March, 1968 were not covered by Item No. 19 of the First Schedule to the Central Excises & Salt Act and the petitioners are entitled to refund of the Central Excise realized from the petitioner No. 1 so far. The petitioners have made applications for refund of Rs. 72,476.47P. on 27th September, 1979 for Rs. 9,82,907.37P. on 8th of March, 1980 and for Rs. 5,51,580.21P. on 12th July, 1980 and the said applications for refund have not been disposed of in favour of the petitioners. Thus the petitioners have been compelled to come to the writ Court seeking reliefs as indicated above.

5. It is submitted on behalf of the respondents that the petitioner company manufactures or produces articles from cotton fabrics/man-made fabrics subject to process of waterproofing and rubberising i.e. to say goods covered by under Item No. 19(I)(b)/Item No. 22(1)(b) as the case may be of the First Schedule to the Central Exrises and Salt Act, 1944. The goods manufactured by the petitioner company are not rubber goods as alleged. The attention of the Court has been drawn to the fact that it is immaterial under what nomenclature a particular product is known or called in the trade, but the fact remains that the petitioner company supplies cotton fabrics subject to the process of waterproofing and rubberisation and sold their products directly coming under Tariff Item No. 19(1) (b) of the First Schedule of the Central Excises and Salt Act, 1944. Detailed arguments have been advanced that the goods manufactured by the petitioner company are not simply rubber products as contended by them and as such goods do not come under Item No. 16A of the First Schedule to the Central Excises and Salt Act, 1944 and the Exemption Notification No. 71 of 1968. The Central Excise Authorities had all along acted strictly in accordance with law and there is no dispute that the sheet manufactured by the petitioner Company is nothing but cotton fabric subjected to waterproofing and rubberisation and the attempts made by the petitioner to bring the said products under Item No. 16A(2) to avail the exemption benefit under Notification No. 71/68 dated 1st April, 1968 as amended by Notification No. 27 of 1973 dated 1-3-1973 have no merit. In fact, the petitioners' products are really man-made fabrics or cotton

fabrics subjected to process of rubberisation by spreading rubber solution over the fabrics and then vulcanising the same.

6. Having heard the arguments advanced by the Learned Counsels appearing for the respective parties this Court with anxieties has scrutinized the pleadings of the parties in details. Looking to the facts of the case in the background of several notifications and the classifications as made in First Schedule to the Central Excises and Salt Act, 1944 this Court finds that the dispute is limited to the point as to whether the products manufactured by the petitioner Company are covered by Tariff Item No. 16A(2) or Item No. 19(1)(b) of the First Schedule to the Central Excises and Salt Act, 1944. It is true that Gujarat High Court delivered the Judgment on January 24, 1979 and an attempt has been made to overcome the situation created by the said judgment. But however, the Notification No. 101/79 dated March 1, 1971 cancelling Notification No. 39/68 dated 1-3-1968, has resulted (in) cancellation of all previous exemption notifications. The Central Excise Laws (Amendment Validation) Act, 1982 provides the retrospective effect and the said Act No. 58 of 1982 has caused removal of the grounds for claiming exemption from payment of Central Excise Duty under Tariff Item No. 16A.

7. After close scrutiny of the submissions made on behalf of the writ petitioners, this Court finds that the products manufactured by the petitioners cannot be termed as rubber goods. They cannot claim that the items manufactured by them are to be classified under Tariff Item No. 16A(2) and they are entitled to exemption accordingly. Looking to the various aspects of the case and the nature of goods manufactured by the petitioners, this Court is convinced that the products manufactured by the petitioner should be classified under Item No. 19(1) (b) of the First Schedule to the Central Excises and Salt Act and the dispute raised by the petitioners has no merit. This Court further finds that the steps taken by the respondents are neither contrary to nor inconsistent with provisions of law and the petitioners cannot be permitted to urge that there has been irregular and illegal collection of the excise duties and the petitioners cannot sustain any claim for refund in the manner as alleged in the writ petition. Since, the question raised by the petitioners has been answered in the negative, the writ petition fails. In the result, the Rule is discharged. All interim orders are vacated. There will be no order as to costs.