

(1987) 08 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No. 47 of 1982

Century Textiles and Industries Ltd., Bombay

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-08-1987

Acts Referred:

Customs Act, 1962 — Section 131(3)

Citation : (1987) 3 BomCR 449 : (1988) 15 ECC 63 : (1988) 19 ECR 373 : (1988) 37 ELT 524

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Judgement

1. What is the correct classification of Cotton Linters Pulp under Indian Tariff Act, 1934, is the question that is to be decided in this petition. The relevant entries are entry No. 43(1) and entry No. 44 which are set out below :

"43(1) "Pulp (other than wood pulp) from vegetable fibres such as bamboo, grasses, reeds and agricultural residues, including pulp of rags, and mixtures of such pulp". 44 "Paper, all sorts, not otherwise specifies."

The petitioners say that the item falls under entry No. 43(1) while the department contends that it falls under entry 44.

2. The petitioners as manufacturers of textile fabrics imported various consignments of Cotton Linters Pulp. The consignments were all imported in the form of continuous rolls which is one of the forms in which the pulp is shipped internationally. On August 11, 1972 the petitioners imported seventeen rolls of Cotton Linter Pulp and filed their bill of entry No. 828 on October 13, 1972. In the bill of entry the petitioners classified Cotton Linters Pulp under entry No. 43(1) of the first Schedule of the Act. The Customs Authorities did not accept the classification and insisted that the classification should be under entry No. 44 of the first Schedule to the Act. They levied Customs duty under the Act at the rates prevailing under entry No. 44. The petitioners paid duty under protest.

They asked for refund of the differential amount. The Assistant Collector by his order dated October 8, 1975 rejected the refund application. The petitioners preferred an appeal to the Appellate Collector of Customs. By his order dated August 31, 1976 the Appellate Collector of Customs allowed the appeal and directed the consequential refund of dues.

3. On February 17, 1977, the Government issued a notice u/s 131(3) of the Customs Act, 1962, purporting to review the order dated August 31, 1976 on the ground that the goods were filter paper made from Cotton Linters Pulp and were known as such in the industry. It was further alleged that the material is composed of Cotton Linters Pulp and that it has undergone further mechanical processing to provide uniform formation without so hydrating the pulp as to reduce porosity below accepted levels and to convert the pulp to the form of continuous rolls. And further it was contended that the goods are known as filter Papers in the industry.

4. The petitioners filed their statement and pointed out that the impugned items are Cotton Linters Pulp and not paper made of Cotton Linters Pulp. They also relied on the Customs test report confirming that the goods are Cotton Linters Pulp. They also pointed out that the end use of the impugned goods, which are admittedly filtering media, is an extraneous consideration in the matter of determination of classification particularly when such goods are prima facie classifiable under a specific item. They also further pointed out that merely because the impugned goods are used as filtering media they do not become filter paper. They further pointed out that the decision of the appellate Collector was also in conformity with the decision of the Central Government in another matter in the case of the National Rayon Corporation Ltd. where similar goods had been imported and similar question had been determined, and they in fact annexed the said order dated January 18, 1971 in support of their contention. They have also pointed out that the goods in question were imported against the import licence issued for Cotton Linters Pulp for filtration.

5. However, the Government negated the contentions of the petitioners and reversed the order of the appellate Collector. This petition had been filed to challenge this order of the Government.

6. Mr. Hidayatullah appearing for the petitioners pointed out that there is total non-application of mind on the part of the Government when the Government passed its final order inasmuch as the reasons given in the final order are the very same reasons which are mentioned in the show cause notice. He submitted that this clearly indicates that the Government had come with a closed mind and was not prepared to accept any of the contentions of the petitioners.

7. He then attacked each of the grounds relied on by the Government. Firstly, he pointed out that the Government while coming to the conclusion that item Cotton Linters Pulp is a filter paper and, therefore, leviable for duty under entry No. 44 relied on the end use of the product. He also submitted that the Government has

relied on the chemical test and the technical meaning of the word while it ought to have taken into account the commercial sense of the term. In this connection he drew my attention to the case of Advani Oerlikon Ltd. and another v. Union of India and others, reported in 1981 E.L.T. 432 (Bom.). The learned Judge has clearly laid down after referring to various judgments of the Supreme Court and other High Courts, that the Supreme Court has always depreciated the authorities resorting to personal observations, technical books, dictionary meanings and the end use of articles sought to be made liable to excise duty.

8. In the order, the Government has referred to classification as made by CCCN and the Government, relying on the same, has come to the conclusion that the impugned items are classified thereunder as paper and not as pulp. Mr. Hidayatullah pointed out that it is not proper for the Government to rely on the same, and in that connection he drew my attention to the Glossary of term used in paper trade and industry as per the India Standard Institution. In that, Rag Pulp has been defined as under :

"Rag Pulp - Pulp obtained from textile scraps or rags or linters of cotton, linen or hemp or a mixture of them."

9. Mr. Hidayatullah drew my attention to the case of Union of India and others v. D.C.M. and others, reported in 1977 E.L.T. (199). The Supreme Court has categorically stated that it is safer to rely on the view of the Indian Standard Institution than on any other opinion and in this connection the relevant passage is as follows :

"Apart from all this we are of opinion that the view of the Indian Standard institution as regards what is refined oil as known to the trade in India must be preferred to the opinion of this author." (i.e. a foreign author).

10. In the case of Dunlop India Ltd. & Madras Rubber Factory Ltd. v. Union of India and others, reported in 1983 E.L.T. 1566 (S.C.), again, the Supreme Court has categorically stated that the end use of the article is absolutely irrelevant and the relevant portion of the judgment reads as follows :

"We are clearly of opinion that in the state of the evidence before the revisional authority no reasonable person could come to the conclusion that V. P. Latex would not come under rubber raw. The basis of the reason with regard to the end-use of the article is absolutely irrelevant in the context of the entry where there is no reference to the use or adaptation of the article."

In this case the Supreme court has also said with regard to the technical tests as follows :

"It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distance entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles

are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry."

11. Mr. Hidayatullah also pointed out that in 1972 CCCN was not statutorily considered as a part of the Customs Tariff and any item described therein may not necessarily stand in comparison with the entries as given under the entry as given under the Act. He, therefore, submitted that when the expression is very clear under the entry itself. It is not necessary to fall back upon any such nomenclature. In this connection he relied on a case of Haldyn Glass Works Pvt. Ltd. v. M. L. Badhwar, reported in 1980 E.L.T. 291 (Bom.). Here, there is a reference to Brussels Nomenclature and the relevant portion is as follows :

"Mr. Manjrekar then submitted that the appellate authority has relied upon the description "glass beads" in Brussels Nomenclature which was adopted by the Government of India in 1975 and as the expression described therein supports the claim of the department, I should not disturb the orders of the authorities below. The submission is misconceived. In the first instance, Brussels Nomenclature was not available to the department on the date when the show cause notice was issued on December 23, 1972. In the second instance, the petitioners have laid large material in the shape of recognised books and dictionary to indicate the true ambit and scope of the expression "glass beads" and that undoubtedly support the petitioners. Apart from it when the expression in the Notification is very clear and is not restricted or limited to manufacture of glass beads for ornamental or personal use, in my judgment, it is not really necessary to fall back upon the Brussels Nomenclature to determine the true scope of the Notifications."

Similar observations are found in the case of Atul Glass Industries (Pvt.) Ltd. Vs. Collector of Central Excise, .

12. Mr. Hidayatullah also pointed out that the Government in its order has referred to the form in which the pulp is imported. He submitted that the form is irrelevant. He also submitted that the entries are clear and under the Act wherever the form is referred to, that is clearly mentioned in the entry as such. In the present case entry No. 43(1) is a specific entry and it does not refer to the form as such.

13. As against this Mr. Pochkhanwalla submitted that the bill of entry itself shows that the petitioners had imported paper. He also referred to the meaning of the term "Pulp" in the Encyclopaedia Britannica and he submitted that this pulp can be considered as Filter Paper. He also relied on chemical test report which is at Ex. C. to the petition. He also pointed out that this report also shows that the item can be considered as Filter Paper made of Cotton Linters Pulp.

14. I am afraid, I cannot accept any of these contentions of the department. As regards the bill of entry the petitioners had stated clearly that they had shown the item falling under entry No. 43(1). However, it is on the insistence of the Customs Authorities that they had to show the item under entry No. 44. They

have paid the duty under protest. The petitioners thereafter immediately asked for refund of the same. In any event, in my opinion, this argument cannot hold good, as there is no estoppel against a wrong classification.

15. As regards the chemical test report, it is clear that the analysts have clearly stated that the sample is made of pulp and it is a form of a cut-piece. Thereafter, it is stated that such an item can be considered as filter paper made of cotton linter pulp, which is purely an opinion. There is no reason as to why I should not accept the contention of the petitioners that the item has been imported as cotton linter pulp as internationally known, and understood, and as per the licence.

16. If that is so, the petitioners must succeed and I, therefore, pass the following order :

Rule is made absolute in terms of prayers (a), (b)(i), (ii) and (iii). However, as regards prayer (iii) is concerned the amount to be refunded together with an interest of 15% from the date of the petition till Payment.

Payment to be made within a period of 8 weeks from today.

17. There will be no order as to costs.