**(1990) 12 GUJ CK 0024**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 1256 of 1980

Chemicoat Ltd. APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 10-12-1990

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 2

**Citation :** (1991) 34 ECC 205 : (1991) ECR 503 : (1992) 61 ELT 371

**Hon'ble Judges :** M.S. Parikh, J;M.B. Shah, J

**Bench :** Division Bench

**Advocate :** K.A. Kaji, for the Appellant; B.B. Naik, for the Respondent

## Judgement

M.B. Shah, J.—The petitioner Company, inter alia, carries on the business of metallizing and/or lacquering articles of plastics - all sorts, such as films or sheets of polyester, Cellulose acetate, Polyvinyl Chloride and Polyethylene. It is the say of the petitioner that it buys from the local market or imports polyester films and thereafter does the processing work of metallizing and/or lacquering the same. The petitioner purchases the polyester films from the market or imports the same after paying the necessary Excise duty or import duty.

2. It is the say of the petitioner that "Stamping Foil" on which the respondents want to recover Excise duty on the basis of Tariff Item 68 is nothing but a polyester film which is metallized and lacquered and is given some colour with suitable dyes. After purchase of the polyester films they are fed into high vacuum metallizing machine where thin coating of aluminium is deposited on the films by condensation of aluminium vapour. Thereafter the said metallized roll or film is further given coating of chemicals which is called lacquering for the purposes of protection against washing, rubbing, etc. Whenever some colour is to be given to the material, suitable dyes are also added to the lacquer. The lacquerized polyester film is made useful for the purposes of preparing metallized yarn or it can be used as stamping foil. For preparing stamping foil while metallizing and lacquering polyester film the metal and lacquer is applied in such a manner that

it can be transferred to the article on which name or monogram is to be embossed. This type of polyester film metallized and lacquered is called "Stamping Foil". It is the say of the petitioner that in 1972 the second respondent raised the question that metallized and lacquered films were dutiable under Tariff Item 15A(2). Thereafter the petitioner filed Special Civil Application No. 188/73 against the respondents challenging the attempted levy of Excise duty under Item 15A(2) in respect of the metallized and lacquered polyester films. When the matter came up for hearing, the learned Standing Counsel appearing on behalf of the respondents made a statement that the petitioner''s product lacquered and/or metallized polyester/PVC/Acetate films or sheets are produced from the plain (bare) polyester/PVC/Acetate film on which appropriate amount of Excise duty under Item 15A(2) of the First Schedule to the Central Excises and Salt Act, 1944 or additional duty u/s 2A of the Indian Tariff Act, 1934 has already been paid, the petitioner''s goods i.e., metallized and/or lacquered plastic films or sheets whether Acetate, Polyester or P.V.C. based which are processed by the petitioner do not attract further Excise duty under Item 15A(2) of the First Schedule of the Central Excises and Salt Act, 1944 as it stood on that day. The said statement is produced at Annexure "A" to this petition.

3. In 1975 the Superintendent, Central Excise, Baroda, wrote a letter to the petitioner seeking information with regard to decorative articles produced by the petitioner which may come under the purview of the Tariff Item 68. The relevant part of the said letter is as under :-

"The following items has been mentioned in your classification list are exempted.

''Mentallised and/or lacquered PVC/Cellulose Acetate/Polyester film, Stamping foil.''

The item decorative articles etc. comes under the purview of Tariff Items No. 68.

You have shown etc. Please elucidate and give the detailed description of the goods. Please submit the separate C.L. for each commodity."

4. Thereafter the Deputy Collector (Tech.) for Collector of Central Excise, Baroda, issued Trade Notice No. MP/164/78, dated 12-7-1978 wherein it is mentioned that "stamping foils" made from duty paid plain (bare) polyester/PVC/Acetate films or sheets would be classifiable under Tariff Items 68 C.E.T. on the basis of the said Trade Notice the petitioner was directed to file a classification list before the Superintendent, Central Excise, Baroda. The petitioner raised various contentions in his correspondence with the Department wherein it was sought to be contended that stamping foil is manufactured by metallizing and lacquering polyester film and then by applying lacquer coat on it. Stamping foil are articles of plastic and stand covered under Item 15A(2) as per classification issued by the Collector of Central Excise, Bombay, in his Trade Notice. It was also pointed out that the Central Excise Act and Rules are being enforced uniformly in all the Collectorates of the country by the Central Excise Officers and Audit Party of the Central Excise and the Accountant General. Therefore, there is no question of

 

levying Excise duty on stamping foils. Therefore show cause notice dated 2-5-1980 (Annexure ''D'') was issued by the Superintendent of Central Excise, Division II, Baroda, wherein the Department claimed payment of the amount of erroneous refund of duty as on detailed inquiry of the party''s product it is found that the part is manufacturing "stamping foil" after colourising the metallized films with imported dyes in different colours according to requirements and cutting in into required size and designs. It is also mentioned that the end use of stamping foil and its characteristics are different from the metallized and lacquered film sheet. The stamping foil is liable to Central Excise duty under Tariff Item 68. The petitioner has challenged before this Court the said show cause notice and has demanded refund of Rs. 4,806.85 collected by the respondent under threats and coercion by contending that stamping foil would not fall under Tariff Item 68.

5. At the time of hearing of this matter, learned Advocate Mr. Kaji vehemently submitted that stamping foil would be covered under Tariff Item 15A(2) and, therefore, it would not covered by the residuary Tariff Item 68. As against this, Mr. Naik, learned Advocate appearing on behalf of the respondents, has submitted that stamping foil is a different product which has come into existence by manufacturing process as defined in Section 2(f) of the Central Excises and Salt Act, 1944 and, therefore, it is a new and different product from the material from which it is manufactured and, therefore, it was correctly classified under Tariff Item 68 by the respondents. He has further submitted that, in the alternative as it is a new product, even if the contention of the petitioner is accepted, the petitioner is required to pay the Excise duty as per Tariff Item 15A(2) on the basis that it is a new product.

6. For deciding the aforesaid controversy, it would be necessary to reproduce the relevant part of Tariff Item 15A and Tariff Item 68 :-

"Item No. 15A - PLASTICS ---------------------------------------------------------------------- Item Tariff Description Rate of Duty No. ---------------------------------------------------------------------- 15A. Artificial or synthetic resins and plastic materials and cellulose esters and ethers, and articles thereof - (1) *** *** *** *** (2) Articles made on plastics, all sorts, Fifty percent including tubes, rods, sheets, foils, sticks ad valorem. other rectangular or profile shapes, whether laminated or not, and whether rigid or flexible, including layflat tubings, and polyvinyl chloride sheets, not otherwise specified. (3) *** *** *** *** (4) *** *** *** *** ---------------------------------------------------------------------- Explanation I. - For the purpose of sub-item (2), ''plastics'' means the various artificial or synthetic resins or plastic materials or cellulose esters and ethers included in sub-item (1).

Explanation II. - This Item does not include electrical insulators or electrical insulating fittings or parts of such insulators or insulating fittings."

 

"Item No. 68 - ALL OTHER GOODS, N.E.S. ----------------------------------------------------------------------- Item No. Tariff Description Rate of Duty ----------------------------------------------------------------------- 68. All other goods, not elsewhere specified, but excluding - (a) alcohol, all sorts, including alcoholic liquors for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics; and (c) dutiable goods as defined in Section 2(c) of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955). ----------------------------------------------------------------------- 10-12-1990

7. From the aforesaid Item 15A(2) it is abundantly clear that all sorts of plastic articles are covered by the said Item. It also specifically provides along with other things that it includes foils. Admittedly stamping foils are manufactured from the plastic material which is covered by Item 15A(2). As stated above, the process of manufacturing stamping foils is of metallizing polyester films and thereafter giving further coating of chemicals which is called lacquering for the purpose of protection against washing, rubbing, etc. Suitable dyes are added to the lacquer whenever some colour is to be given to the material. For preparing stamping foil the metal and lacquer is supplied to the polyester film in such a manner that it can be transferred to the article on which name or monogram is to be embossed. Admittedly metallized and lacquered polyester films are included within the Item 15A(2). As they are articles made of plastic, under the aforesaid item the foils are also included. Therefore, in our view there is no reason for holding that stamping foils are excluded from the said Item. Explanation II to the aforesaid Item only provides that this item does not include electrical insulators or electrical insulating fittings or parts of such insulators or insulating fittings. Admittedly stamping foils are not covered by the aforesaid Explanation. Hence, in our view learned Advocate Mr. Kaji has rightly pointed out that stamping foils are covered by Item 15A(2). Item 15A(2) is exhaustive specific entry which covers plastic articles of all sorts, in different shapes even of strips or foils, whether laminated or not. Therefore there is no reason to cut down import of this wide entry and to hold that stamping foils are excluded by the said Item and that they would fall within residuary Item 68.

8. Mr. Kaji, learned Advocate appearing on behalf of the petitioner, has relied upon the judgment of the Supreme Court in the case of Superintendent of Central Excise, Surat and Others Vs. Vac Met Corpn. (P) Ltd., etc. etc., , wherein the Court has agreed with the judgment and order passed by this Court with regard to the interpretation of Tariff Item 15A(2) of the First Schedule to the Central Excises and Salt Act, 1944. In that case this Court has held that metallic year manufactured in the form of silvery white or golden thin flat, narrow and continuous strip made or metallized polyester from metallized laminated plastic sheets or foils which are slitted by them by electrically operated machines fall within the purview of Tariff Entry 15A(2) of the First Schedule to the Central Excises and Salt Act, 1944 which is a specific entry relating to articles made of plastic of all kinds and the goods in question do not come within the ambit of the

 

general Tariff Entry 18. The Court has relied upon the judgment of this Court in Special Civil Application No. 780 of 1970 decided on 28th April, 1971.

9. In our view, it is not necessary to discuss the aforesaid judgments because once it is held that Tariff Item 15A(2) is wide inclusive entry which covers plastics of all sorts in different shapes including foils, whether laminated or not it cannot be held that stamping foils which are product of plastic articles would fall within residuary Item 68. In the case of Dunlop India Ltd. v. Union of India AIR 1977 S.C. 597, the Court has observed as under :-

"It is good fiscal policy not to put people doubt and quandary about their liability to duty. When a particular product like V.P. Latex known to trade and commerce in this country and abroad is imported, it would have been better if the article is, eo nomine, put under a proper classification to avoid controversy over the residuary clause. As a matter of fact in the Red Book (Import Trade Control Policy of the Ministry of Commerce) under Item 150 in Section II, which relates to ''rubber, raw and gutta percha, raw'' synthetic latex including vinyl pyridine latex and copolymer of styrene butadiene latex are specifically included under the sub-head ''Synthetic Rubber''. We do not see any reason why the same policy could not have been followed in the I.C.T. book being complementary to each other. When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause. The question of competition between two rival classifications will, however, stand on a different footing."

10. As we have arrived at the conclusion that the stamping foils would fall within the ambit of Tariff Item 15A(2) and the show cause notice dated 2-5-1980 which is challenged by the petitioner only states that stamping foils manufactured by the petitioner are liable to Central Excise duty under Tariff Item 68, it is not necessary for us to decided the second alternative submission of Mr. Naik, learned Advocate for the respondents. It was sought to be contended by the learned Advocate Mr. Naik that the petitioner was manufacturing a different product known as stamping foil by additional process which would be manufacturing process as defined in Section 2(f) of the Central Excises and Salt Act, 1944.

11. Mr. Kaji, learned Advocate for the petitioner, states that the petitioner would take appropriate steps in accordance with the provisions of the Act for refund. Hence no orders for refund of Excise duty are required to be passed.

12. In the result, this Special Civil Application is allowed. It is held that "stamping foils" produced by the petitioner would fall within Tariff Item 15A(2) as it was at the relevant time prior to 1983. Hence the respondents are directed not to take any action in pursuance of the notice (Annexure "D") dated 2nd May, 1980 issued by the Superintendent, Central Excise, Division II, Baroda, asking the petitioner to show cause why stamping foils produced by the petitioner

 

should not be considered as falling under Tariff Item 68. Rules made absolute to the aforesaid extent with no order as to costs.

 