

(1988) 04 SC CK 0029

In the Supreme Court Of India

Case No : Civil Appeals No's. 392-395 of 1988

Collector of Customs, Bombay

APPELLANT

Vs

Bhor Industries Ltd.

RESPONDENT

Date of Decision : 20-04-1988

Acts Referred:

Citation : AIR 1988 SC 1351 : (1988) 17 ECC 46 : (1988) 19 ECR 455 : (1988) 35 ELT 346 : (1988) 4 JT 726 : (1988) 1 SCALE 907 : (1988) 3 SCR 641 Supp : (1988) 3 SCR 641 : (1988) 70 STC 42 : (1988) 2 UJ 135

Hon'ble Judges : Sabyasachi Mukherjee, J;S. Ranganathan, J

Bench : Division Bench

Advocate : B. Datta, ASG, Indira Sawhny and P. Parmeshwaran, for the Appellant;

Final Decision : dismissed

Judgement

Sabyasachi Mukharji, J.—These appeals u/s 130E(b) of the Customs Act 1962 (hereinafter called the Act) are against the order dated 15th December, 1986 passed by the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter called CEGAT). These appeals are related to a dispute regarding the duty of custom imposed on the respondent. The department had levied duty on the product known as 'Sancticizer 429' imported by the respondent. The respondent had contested this duty and filed a claim for the refund. The Assistant Collector of Customs rejected this claim. The Assistant Collector on test found it to be organic compound (easier-type) inform of colourless viscose liquid and as per 7.0. 046m should be considered as polymeric plasticizer. The Appellate Collector found that Chapter 38 of the Customs Tariff Act, 1975 was residuary in nature. According to him, if the item was not covered by any other chapter of the Customs Tariff Act, 1975 then it would fall under Chapter 38. The Appellate Collector further found that linear polyesters were covered by CCCN 39.01(E). The Appellate Collector held that the impugned goods are formed by the condensation of dibasic acid within dihydric alcohols and were similar to the poly

condensation product of terephthalic acid or Adipic acid with ethanediol covered by above mentioned CCCN headings. The Appellate Collector held this CCCN headings corresponds to 39.01/06 of the Customs Tariff Act, 1975. The Appellate Collector upheld the decision of the Assistant Collector. The respondent challenged the aforesaid order of the Appellate Collector before the Tribunal. The Tribunal allowed the appeals relying on the two decisions of the Tribunal one being 1984 ECR 2362 and the other 1985 ECR 363 . The Tribunal was of the view that the product was classifiable under the heading 38.01/19(6) of the Customs Tariff Act. The decision of the Tribunal was later on followed by the subsequent decision referred to hereinbefore.

2. In *Bhor Industries Ltd. v. Collector of Customs, Bombay* (supra), the Tribunal observed that these are ordinarily liquids and, in rare instances, solids, as simple high boiling solvents for the polymers. These are neither resins nor do they seem to be plastic materials; on the other hand, these are added to resins to impart better flexibility or plastic properties to them. It was further observed that there was no evidence had been produced before the Tribunal to show that Sancticizer was a resin or plastic material as defined in Explanatory Notes to C.C.C.N. It was neither similar to resols or polyisobutylene to attract the mischief of Note 2(c) to Chapter 39 nor a separately defined Chemical Compound so as to fall within Chapters 28 or 29 of Customs Tariff Act, 1975. Hence, it was classifiable not under Heading 39.01/06 as it stood before its amendment in 1978 but under 38.01/19(6) of Customs Tariff Act, 1975 as "plasticizer, not elsewhere specified".

3. The Tribunal in its decision considered the technical leaflet on the product. Sancticizer 429 was described as a medium-high molecular polyester plasticizer made from a glycol reacted with a dibasic acid. Among the properties claimed for the product are good low temperature flexibility, excellent electrical properties, outstanding migration resistance, humidity, stability and resistance to oil and solvent extraction. It is said to be an excellent plasticizer for making oil-resistant high temperature PVC wire and cable compounds. It is also stated to be useful for plasticizing ethyl cellulose, nitrocellulose, acrylic caulking compounds, and adhesive systems based upon polyvinyl acetate, styrene-butadiene, and acrylic latices. Reference was also made to Kirk-Othmer's "Encyclopaedia of Chemical Technology" 3rd edition page 111, where it was observed as follows:

A plasticizer is incorporated in a material to increase its workability, flexibility, or distensibility. Addition of a plasticizer may lower the melt viscosity, the second-order transition temperature, or the elastic modulus of the plastic. For effectiveness with polymeric materials, a plasticizer needs to be initially mixed with the polymer either by dissolution of the resin in the plasticizer or the plasticizer in the resin, by heat or dissolving both in a common solvent and subsequent evaporation of the solvent. In "Plastics materials" (4th edition, page 80), J. A. Brydson refers to plasticizers-ordinarily liquids and in rare instances solids-as simply high boiling solvents for the polymer. The action is explained by

saying that plasticizer molecules insert themselves between polymer molecules reducing but not eliminating polymer-polymer contacts and generating additional free volume; also as some interaction between polymers and plasticizers offsetting the spacing effect; or both.

4. The Tribunal came to the conclusion that plasticizers were not resins; these are added to resins to impart better flexibility or plastic properties to the latter. Nor did they seem to be plastic materials by themselves. The Tribunal found that Sancticizer 429 which is admittedly a plasticizer would, therefore, not have fallen for classification under Heading No. 39.01/06 of the Customs Tariff Schedule as it stood prior to its amendment in 1978.

5. The said reasoning was reiterated by the Tribunal in the decision of Collector of Customs, Bombay v. Bhor Industries Ltd. and another. There, the Tribunal observed that as per various technical authorities, plasticizers are not resins. Rather, these are added to resins to impart better flexibility or plastic properties to them. These are not plastic materials by themselves either. Further, goods under reference are not similar to resins or polyisobutylenes. Therefore, their classification under Heading 30.01/106 of the Customs Tariff Act, 1975, prior to and even after its amendment in 1978, should not be applicable. Furthermore, not being separately defined chemical compounds, these would also not fall within Chapter 28 or 29 of the Act. Since these are not specified elsewhere, their appropriate classification would be under Heading No. 39.01/19(6) as "Plasticizers, not elsewhere specified".

6. It is well-settled in these matters how a good is known in the trade and treated in the trade literature is relevant and significant and often decisive factor.

7. In that view of the matter, the Tribunal was right in the view it took. These appeals fail and are accordingly dismissed.