

(1985) 02 GUJ CK 0020

In the Gujarat High Court

Case No : Special Civil Application No. 1242 of 1983

Dynamo Dilectrics

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-02-1985

Acts Referred:

Citation : (1995) 76 ELT 41

Hon'ble Judges : N.H. Bhatt, J;J.P. Desai, J

Bench : Division Bench

Advocate : J.M. Thakore, A.G. and D.A. Dave, for the Appellant; S.R. Shah, Addl. C.G.S.C., for the Respondent

Judgement

N.H. Bhatt, J.—This is a petition by one partnership firm and its partners, who are stated to be citizens of India, challenging the two decisions of the respondent No. 3, being Annexures H and I respectively of February 1983, decided after issuance of the two notifications, Annexures E and F of 19-6-1981 and 20-6-1981 calling upon the petitioners why the classification of the goods manufactured by them and accepted or approved as falling under Entry 22F of the First Schedule appended to the Central Excises and Salt Act, 1944 be not changed. This would have obviously the civil consequence on the petitioners' rights and that is why they had filed this petition for the following prayers to be found at page 30.

(A) Your Lordships will be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the Tariff Advices No. 48/79 and 120/81 at Annexure P collectively;

(B) Your Lordships will be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or directions quashing and setting aside the notices to show cause dated 19-6-1981 and 20-6-1981 passed by the third

respondent at Annexure B collectively, as well as the order passed by the fourth respondent at Annexure J collectively;

(C) Your Lordships will be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ of declaration or a writ in the nature of declaration, declaring and holding that the glass fabrics (epoxy B stage) varnished fibre glass sleeves are glass fabrics covered under Tariff Item 22F and eligible for exemption under Notification 87/76.

(D) Your Lordships will be pleased to issue a permanent injunction restraining the respondents from recovering duty of excise on glass fabrics (epoxy B stage) and varnished fibre glass sleeveings under Tariff Item 22B of the First Schedule of the Act.

2. The matter was admitted by another Division bench of this court and certain interim reliefs were granted.

3. In order to understand the grave controversy that was [raised] before us in this matter, a few basic facts are required to be closely noted. The petitioner-firm has been manufacturing and dealing in glass fabrics (epoxy B stage), varnished fibre glass sleeves and unvarnished fibre glass sleeves and also scrap of the last two items. They have, for the purpose, their factory situated at Baroda, within the jurisdiction of the respondent No. 3, the Assistant Collector of Central Excise. The firm had commenced its business of manufacturing those articles in the year 1968-69. As per the then existing entries in the Schedule appended to the Central Excises and Salt Act, hereinafter referred to as "the Act" for brevity's sake, the petitioners were not required to pay any excise duty and an unsuccessful attempt was made by the respondent No. 3's predecessor to impose excise duty on those manufactured articles by alleging that some of the goods manufactured by them fell under the then existing Entry 22. The matter, however, was carried to the Central Board of Excises and Customs by these very petitioners, because the Collector interpreted the Tariff Item 22 to the detriment of these petitioners. The Collector held that for the period from 1-1-1969 to 15-3-1976 the goods manufactured by the petitioners fell under the then existing Entry No. 22 because on the day following that day (i.e., 15-3-1976) itself the exemption was granted on such articles. The main reason that prompted the Asstt. Collector to try to attract Entry 22 to the goods was that those fabrics made out of glass fibre were fabrics impregnated or coated with preparations of cellulose derivatives or of other artificial plastic materials. Negating the said contention of the Collector, the Board held in substance that any or every impregnated or coated fabrics would not be included in the Item No. 22 which was captioned as Rayon or Artificial Silk Fabrics.

4. On and from 15-3-1976, the original Entry 22 came to be almost substantially changed. In this petition, we are concerned with Entries 22B and 22F which are reproduced below for ready reference. Incidentally, we shall have to refer to Entry 19 dealing with Cotton fabrics, Entry 20 dealing with silk fabrics and Entry

21 dealing with woollen fabrics. Entry 22 in its initial part refers to "Man-made fabrics", meaning all varieties of fabrics manufactured either wholly or partly from man-made fibres or yarn.

"22B. Textile fabrics impregnated, coated or laminated with preparations of cellulose derivatives or other artificial plastic materials not elsewhere specified.

22F. Mineral fibres and yarn and manufactures therefrom, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, the following, namely,

- (1) Glass fibre and yarn including glass tissues and glass wool;
- (2) Asbestos fibre and yarn;
- (3) Any other mineral fibre or yarn, whether continuous or otherwise, such as slag wool and rock wool;
- (4) Other manufactures in which mineral fibres or yarn or both predominate or predominate in weight."

5. The petitioners have been manufacturing glass fabrics and then treating them with epoxy B and, therefore, the glass fabrics are styled as glass fabrics (epoxy B stage). They are also manufacturing varnished fibre glass sleeves and unvarnished fibre glass sleeves. There is no controversy that all these fibres are ultimately mineral fibres and fabrics made therefrom are mineral fabrics. On and from 15-3-1976, or 16-3-1976 to be exact, there was exemption notification specifically stating that the Central Government exempted "mineral fibres and yarn and manufactures therefrom" falling under Item No. 22F of the First Schedule from the whole of the duty of excise leviable thereon. This notification is in vogue even presently. As the items manufactured by these petitioners were so exempt, the classification of the goods was not required to be resorted to with reference to Rule 173B of the Rules, but by way of abundant caution, this petitioner-company submitted Form I year after year and those forms are to be found collectively at Annexure B. The petitioners' contention that these items referred to in those forms were exempted as per the above-mentioned notification. Annexure A at page 33, was upheld by the Assistant Collector of Customs as per his endorsement made at the bottom of that form. The words are as follows :

"Tariff classification and rate of duty leviable in respect of all goods.... is approved until further orders".

The goods mentioned in the first Form were varnished glass fabrics and glass fabrics (epoxy B stage). In the Form for the year 1977-78 at page 41, the products that were mentioned were varnished sleeves, unvarnished sleeves and scraps from the same. That was also approved and so was approved Form for the year 1978-79 also. Nay, the petitioner-firm was informed by the Superintendent concerned by his letter, dated 17-7-1980 (Annexure B at page 34), that the

classification list submitted to him was returned, as it was not required to be submitted after every budget in view of Trade Notice No. 148/79, dated 18-7-1979.

6. The things thus merrily went on and the goods were not subjected to excise duty all these years, but thereafter the respondent No. 3 took it into his mind that the petitioners' four types of goods, namely, glass fabrics (epoxy B stage); varnished fibre glass sleeves; unvarnished fibre glass sleeves and the scraps therefrom were liable to excise duty. So, the notice, Annexure F dated 19-6-1981 was issued telling the petitioners that the glass fabrics (epoxy B stage) were not mineral fabrics and yarn falling under Tariff Item No. 22F, but were "textile fabrics" impregnated, coated and laminated with preparations of cellulose derivatives and of other artificial plastic minerals not elsewhere specified. In other words, it was stated that the goods were liable to excise under Item 22B. Another notice also was issued and it is to be found at Annexure E, dated 20-6-1981. It is in respect of varnished and unvarnished fibre glass sleeves and scraps thereof. The petitioners were called upon to show cause to the respondent No. 3 "why the classification of the products, namely, varnished fibre glass sleeves and unvarnished fibre glass sleeves and scraps of those products, which did not, according to the Officer, fall under Tariff Entry 22F be not classified as falling under Tariff Item 22F(4).) (It was not stated in this notice that these items fell under Item No. 22B, but under some misconception it was mentioned that Item No. 22F(4) was attracted). The petitioners gave reply to those notices which are to be found at Annexure F, and written submissions also were given and some good deal of expert evidence was adduced. Ultimately, the two orders, Annexures H and I came to be passed in February 1983, holding that glass fabrics (epoxy B stage) were not mineral fibres and yarn falling under Tariff Item 22F, but they fell under Tariff Item 22B and, therefore, the classification of the product was revised. Qua the other items of manufacture, the order is to be found at Annexure "I" and it is also of February 1983. There, the decision is partly in favour of the petitioners. As far as unvarnished sleeves and their scraps were concerned, they were held to be falling under Tariff Item 22F, but with respect to varnished fibre glass sleeves and scrap therefrom it was held that they be falling under Tariff Item 22B and to that extent the classification was modified, obviously attracting the duty provided for and depriving the petitioners of the exemption of the notification at Annexure A. This has given rise to this petition.

7. The casual reading of the above-mentioned two orders at Annexures H and I is sufficient to show that the respondent No. 3 has based his decision essentially on the impregnating, coating or laminating of the fibres or fabrics with preparations of cellulose derivatives or of other artificial plastic materials and it is because of this additional application that the glass fabrics, which are obviously mineral fibres, and their products are taken out of Entry 22F. The burden of say of the respondent No. 3 is that unvarnished fibre glass sleeves are mineral ingredients falling under Entry 22F. However their say that varnished glass fibre sleeves and

their scrap are not mineral fibres and yarn set out in Tariff Item 22F is ex facie absurd. Any further process does not alter the basic character of the manufactured material. It would remain mineral fibre and yarn. While giving this decision, the authority has ignored Entry 22F(4), which was inadvertently referred to in the second of the two notices at page 52. It is to be noted with pertinence that Entry 22F(4) deals with "other manufactures in which mineral fibres or yarn or both predominate by themselves or predominate in weight." It cannot be gainsaid that this varnished glass fibre sleeves and their scrap are manufactures in which mineral fibres are involved. To take them out of that entry absolutely by calling them textile fabrics because of impregnating or coating or laminating is to refuse to see the obvious. When mineral fibres and yarn and manufactures therefrom are specifically dealt with in Entry 22F, it is this Entry and this entry alone that has got to be adverted to and not any other entry by a strained process of reasoning. Under Entry 22F(4), if any manufacture in which mineral fibre or yarn or both are there, Entry 22F has to be considered but in the light of that Clause (4). In such a situation, what is to be seen is whether in this manufacture in which mineral fibres or yarn or both are involved, those mineral fibres or yarn or both predominate or not. The very concept of predomination either constitutionally or from the weight point of view presupposes some other process and laminating or impregnating or coating is such a process. That is envisaged in 22F(4). Only thing, therefore, to be seen is whether such manufactures like varnished fibre glass sleeves and their scrap are such manufactures in which mineral fibres or yarn or both predominate. The petitioners had shown before the respondent No. 3 (and those certificates are again produced before us also to be found at pages 76A, 76B, 80 and 81) that apart from constitution there is predominance from the point of view of weight also. Therefore, on this much interpretation alone, it could be said that the decision of the authority is bad. Even with respect to glass fabrics (epoxy B stage), that is, glass fabrics which are impregnated, coated or laminated preparations of cellulose derivatives or of other artificial plastic materials also, the same argument will apply. They can be said to be manufactures in which mineral fibres or yarn or both are involved and if they are so involved, the only question to be addressed to would be whether those mineral fibres or yarn or both predominate there generally or predominate from the point of view of weight. The moment mineral fibres come into the play, Entry 22F alone is to be resorted to. If that Entry 22F either applied or does not apply, but the other entry dealing with the different type of case known as textile fabrics cannot be pressed into service. We again emphasise here that the sole factor that has weighed with the respondent No. 3 is the process of impregnated, coating or laminating on the fabrics and then calling them as textile fabrics and a strange application of Entry 22B is made. So, on this patent reading of the provisions of Entry 22F, we have no hesitation in holding that the decision of the Respondent No. 3 in respect of glass fabrics (epoxy B stage) and in the matter of varnished and fibre glass sleeves and scrap therefrom is ex facie bad. It seems that because of the two Tariff Advices to be found at pages 75 and 76 (Annexure P

collectively) which have no binding or pervasive effect qua the quasi-judicial functions of deciding a particular Tariff Item to be applicable, the Respondent No. 3 seems to have reached this artificial decision of his. There Tariff Advices are only inter-department communications or guidelines and they cannot have any weight in a court of law, which has to decide the question on the basis of the law, as it is, and not by considering how it is looked at by the higher authorities of the Department.

8. One more argument also in this connection deserves to be considered. These products, namely, glass fabrics (epoxy B stage) and varnished and unvarnished fibre glass sleeves and their scraps are even popularly not known as textile fabrics. It is a settled legal position that such mercantile goods are to be understood to have their ordinary commercial meanings and not the far-fetched possible technical meanings that could be etymologically derived. The petitioners in their petition have averred very categorically as follows :-

"The petitioners submit that even applying the common parlance test, which is well-settled and accepted method of classification of products in fiscal statutes, the products would be classified under Tariff Item 22F. The petitioners submit that in the market and in trade circles, glass fabrics (epoxy B stage), varnished and unvarnished fibre glass sleeves are known as glass fabrics and are understood as such and are not known as textile articles in any manner. It is a common understanding of people in trade and people dealing with the products that these products are admittedly glass fabrics. The petitioners submit that the orders placed for the purchase of the products by different consumers with the petitioner firm also name these products as glass fabrics.

The petitioners submit that even the industrial consumer of the products and a dealer of the product have both classified these products as glass fabrics as understood by them in the course of their trade."

The opinion of other bodies are also to be found at Annexure "O" collectively, who are the industrial consumers of these products. Curiously enough, this part of the factual averment has not been controverted, though the petition was admitted as back as on 28-3-1983, that is about two years ago from today. So these factual averments are to be treated as true and once they are treated as true, the twisted or far-fetched or strange meaning sought to be given to a part of the manufacture from glass fibres, cannot be given any countenance.

9. Mr. S. R. Shah, the learned standing counsel for the Central Government, however, urged before us that the Entry 22B has to be read in the context of Entries 19, 20 and 21 and his emphasis was that genesis or a wider class is fabrics impregnated, coated or laminated and if such fabrics impregnated, coated or laminated are not elsewhere provided specifically, they will be covered by Entry 22B because they also can be designated as textile fabrics. His argument was that the word "textile" has got a meaning given to it by the Supreme Court in the case of Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and

Others, and included even a braiding process which is the process adopted by this petition-firm. This is an authority in respect of Rajasthan Sales Tax Act and for purposes of sales tax, it was examined whether a tyre cord fabric has been understood as the fabric. Mr. Shah did not dispute the fact that items in this petition, which are the bone of contention, are not fabrics, but he stated that because of the etymological meaning of "textile" given in dictionaries of various textile terms, the goods in question can certainly be said to be textile fabrics and as the wider class is of textile fabrics, that is, impregnating, coating and laminating, and as they are not elsewhere specified, then Entry 22B would be at once attracted. We find it difficult to subscribe to this view for the reasons that we have given above, namely, they whenever mineral fibres and yarn and manufactures therefrom are to be dealt with, initially that Entry 22F alone is to be adverted to and the qualifying words, namely, impregnated, coated or laminated, etc. which are annexed to textile fabrics, can be said to have been included in Entry 22F(4) as the product or manufacture with mineral fibres or yarn or both predominating or predominating in weight. So, those qualifying words, namely, impregnated, coated or laminated, etc. do not take away the mineral fibre with which we are concerned in this petition from the purview of Entry 22F. If it be so, there is no scope for other arguments and we have to hold that to the manufactured items in question, Entry 22F alone stands applied. It was so applied all these years and to us it appears quite rightly done.

10. We may say that we in good company in respect of this interpretation of ours. The Madras High Court had an occasion to deal with very type of sleeves of fibre glass in connection with the Customs Act in the case of Standard Batteries Ltd. Vs. Appraiser, Appraising Deptt. and Others, . There also, the word "textile" occurring in Item 53 was to be interpreted and the learned Judge of the Madras High Court held that the word "textile" occurring in Item 53 must be understood in its ordinary and popular sense and not in its primary or technical sense. The High Court found as a matter of fact that since the trade and industry did not look upon the fibre glass sleeveings as variety of "textile manufacture", they would not be classifiable under Item 53 of the Customs Tariff. We also hold the same thing on the basis of the very practice of the trade and industry, which is successfully shown as not looking upon the fibre glass sleeveings or the glass fabrics (epoxy B stage) adopted as variety of textile manufacture or textile fabrics.

11. In view of the above finding of ours, we are not required to deal with other grounds pleaded in support of the various contentions on behalf of the petitioners. As for example, it was alleged that Article 14 of the Constitution of India was violated in so far as many Collectorates in India adopted the view, which has appealed to us in this petition. Reference is to be found to these averments at pages 26 and 27 of the compilation before us, without any traverse from the other side. The other point canvassed before us was that once the classification was approved, the very Assistant Collector had no authority to review or revise his decision and even if he had such an authority at law, he

could not do so unless there was change of law or unless some new facts had come to light. The third argument that was canvassed before us was that after giving a notice that the sleeves and scraps thereof fell under Entry 22F(4), decision could not be reached that Entry 22B was attracted to them, as is the case in respect of decision at page 61 of our file pertaining to varnished glass fibre sleeves and scraps thereof. We do not think that it is necessary for us to go into these questions because on interpretation of the entries themselves, we find that the petitioners have an impregnable case.

12. The result is that the petition is allowed. The two orders, Annexures H and I are quashed and set aside and consequently the notices on which they are passed and which are collectively annexed at Annexure "E" fall through. It is declared that glass fabrics (epoxy B stage) and varnished fibre glass sleeves with their scrap are covered under Tariff Item 22F and continue to be entitled to exemption under notification, Annexure A. The respondents Nos. 1 to 3 are restrained from recovering from the petitioners any duty of excise on those items. Rule is made absolute with costs.

13. Mr. Shah prays for the stay of the operation of this judgment. We grant this request and the operation of this judgment is stayed for one month, at the end of which the Bank guarantee shall be liable to be returned, if no other orders are received from the Supreme Court. Personal undertakings, however, stand discharged with immediate effect.

14. At this stage, Mr. Shah for the Union of India applies for a Certificate under Art. 133 of the Constitution of India. The certificate prayed for is refused because, in our view, there is no substantial question of law, which needs to be decided by the Supreme Court.