
(1988) 04 DEL CK 0001

In the Delhi High Court

Case No : Order No. 329 of 1988-C

Flexoplast Abrasives (India) Ltd.

APPELLANT

Vs

Collector of Central Excise, Pune

RESPONDENT

Date of Decision : 11-04-1988

Acts Referred:

Citation : (1988) 04 DEL CK 0001

Hon'ble Judges : V.P. Gulati, J; S.D. Jha, J

Bench : Division Bench

Judgement

V.P. Gulati, Member (T)

1. This is an appeal against the order of the Collector of Central Excise (Appeals) Bombay.

2. Brief facts of the case are that the appellants manufactured a product, which is claimed to be phenolic resin but being in the nature of an intermediary product not capable of being marketed and thus could not be considered as goods for the purpose of Central Excise levy. Process of the manufacture of the product as seen from the record is as under :

"The product, phenolic resin is manufactured by the factory under a Chemical process with the combination of phenol and formaldehyde as raw materials, in presence of catalyst. Phenol is first melted, and pumped in the reaction kettle and then formaldehyde and caustic soda (which acts as a catalyst) are added to the mixture and is heated up to 75/80 Degree C by introducing steam inside the kettle under vacuum pressure for 3 to 3-1/2 hours after that, dehydration starts under vacuum pressure at 60/65 Degree C, when dehydration is complete the kettle is cooled by circulation water before discharge and is allowed to remain for 2 days as stated by the party vide their letter No. FAL/AUR/8/3545 dated 21-1-1978...."

The lower authority held the product to be falling under T.I. 15A(1) and has

helped the levy of duty under the said item.

3. The learned consultant for the appellants pleaded that the goods are manufactured by the appellants for their own use and serve as adhesive for the manufacture of sand paper, emery paper or emery cloth. He pleaded that the goods were in a powder form and still had 20% water content. He pleaded that the test results in the Central Excise laboratory show that the goods manufactured by the appellants were viscous liquid, and that the Collector (Appeals) in para 4 of his order has not appreciated the position correctly in regard to the condition of the goods. He stated that it is true that after the reaction for the manufacture of goods had taken place in the reaction kettle a degree of dehydration was carried out but this did not mean that water had been totally extracted from the mixture. He pleaded that what was done was partial drying of the mixture. He stated that this viscous liquid which was obtained could be stored for 4-5 days and was used as an adhesive after addition of 3-4 times by volume of water in the same. He stated that the product manufactured by the appellants was still in solution form and was not covered under Tariff Item No. 15A(1). He cited the case of *Indian Plastics & Chemicals Pvt. Ltd. v. Union of India & Others* - 1981 ELT 108. He also cited the case of *Ceat Tyres of India Ltd. Vs. Union of India and others*, which has been followed in the case of *Hindustan Bobbin Ltd. v. Collector of Central Excise, Calcutta*. It was pointed out to him that these two latter decisions pertain to the classification of dip solution which was different from the appellants' product. He further pleaded that the goods were not marketable and the very fact that these are manufactured by the appellants for their own use goes to prove that. He pleaded for the goods to be considered marketable at least there should be some marketing of the same. He stated that no evidence has been produced by the department that such goods have been marketed. He cited the case of *Union Carbide India Limited Vs. Union of India (UOI) and Others*, and that of *Geep Industrial Syndicate Ltd. Vs. Central Government and Others*, . He also cited the case of *Shakti Insulated Wires Pvt. Ltd. and another Vs. Union of India and others*, . He stated as in their case also the viscous liquid manufacturer as in the case of goods dealt within these cases (*supra*) is in an unfinished condition and the appellants' goods should be considered as intermediary product and not marketable as such.

4. Learned JDR for the Department stated that the lower authority had examined the question of dehydration and had clearly stated that the appellants' goods were in dehydrated condition which would mean that the same were without any water. He pleaded that the appellants have not led any evidence that the goods still contained 20% water as pleaded. He drew our attention to test result communicated to the appellants by the Central Excise authority view F. No. TRII/Flexo/Sample/82, dated 16th December, 1982. He stated that the sample in that case was a solidified mass. He pleaded that the appellants' product was phenol Formaldehyde resin dehydrated and this answer to the category of "A" stage resin which is recognised so in the technical books as a distinct entity. In this connection, he drew our attention to the relevant portion in Brydson Book on

Plastic Materials where it has been described as under :

"To make a resole resin, an alkaline catalyst such as sodium hydroxide is added to the phenol and formaldehyde before heating the bath to 80-100 Degree C are controlled with vacuum. Reaction times are generally 1-3 hr. Since a resole resin is capable of gelling in the still, dehydration temperatures are kept below 105 Degree C by the application of vacuum. Gel time on a 150 Degree C hot plate is a common test that is used to indicate the degree of advancement of the resin and to determine when the batch should be discharged. Solid resoles are discharged to resin coolers, a series of parallel, internally cooled metal plates that the resin flows between to be rapidly cooled. The low molecular weight, water soluble resins are finished at as low a temperature as possible usually around 50 Degree C, whereas the less reactive Para-substituted resoles can be finished at temperatures as high as 120 Degree C.

He stated technically the goods manufactured by the appellants was resin as seen from the technical books. He pleaded that test report and record clearly show that the goods answer to the description of phenolic resin. It was pointed out to him that the test reports were with reference to whether the appellants were eligible to benefit available under Notification No. 192/82. He pleaded that so far as test result is concerned it does not matter, for the purpose of these proceedings, that the goods were tested for the purpose of benefit of Notification No. 192/82 as the test results furnish the relevant information as to what these goods was. The learned Consultant for the appellants also agreed that for the purpose of proceedings before us the test result can be taken into consideration for ascertaining the nature of the goods. He in this connection drew our attention to the photo copy of literature on Phenolic Resin Adhesives submitted by the appellants to the effect that the goods manufactured by the appellants were resole resin. Relevant extract in this connection is reproduced for convenience of reference :

"To make a resole, resin, an alkaline catalyst such as sodium hydroxide is added to the phenol and formaldehyde before heating the batch to 80-100 Degree C. Reaction temperatures below 100 Degree C are controlled with vacuum. Reaction times are generally 1-3 hrs. Since a resole resin is capable of gelling in the still, dehydration temperatures are kept below 105 Degree C by the application of vacuum. Gel time on a 150 Degree C hot plate is a common test that is used to indicate the degree of advancement of the resin and to determine when the batch should be discharged. Solid resoles are discharged to resin coolers, a series of parallel, internally cooled metal plates that the resin flows between to be rapidly cooled. The low molecular weight, water soluble resins are finished at as low a temperature as possible, usually around 50 Degree C whereas the less reactive Para-substituted resoles can be finished at temperatures as high as 120 Degree C.

It is important that the liquid water soluble resoles retain high water miscibility since, when used as thermal insulation binders, they are diluted with water and

sprayed onto glass and rock-wool fibres. Therefore, this type of resin is stored and shipped under refrigeration. Solid resole resin are more stable and are refrigerated only in warm weather. Those based on phenol are considered stable for 3-6 months while those based on Para-substituted phenols, such as butyl phenol are stable for a year or longer."

He pleaded the resole resin manufactured as adhesive, in fact, are marketed and can be stored for a long period and also transported. In this connection he drew our attention to relevant portion of the same literature and is reproduced below :

"It is important that the liquid water soluble resoles retain high water miscibility since when used as thermal insulation binders, they are diluted with water and sprayed onto glass and rock-wool fibres. Therefore, this type of resin is stored and shipped under refrigeration. Solid resole resins are more stable and are refrigerated only in warm weather. Those based on phenol are considered stable for 3-6 months while those based on Para-substituted phenols, such as butyl phenol, are stable for a year or longer."

He further pleaded that for the purpose of Central Excise levy it was not essential that the goods should be actually brought to the market and it is enough that these are marketable. In this connection he drew our attention to the case of Collector of Central Excise, Ahmedabad v. Jay Enterprises and 5 Other : 1987 (29) (Tri) 288 and referred to the reference in this decision in the case of 1985 (21) 410 (Delhi) in this context. He pleaded inasmuch as T.I. 15A(1) specifically covers resin manufactured by the appellants these are correctly assessable under T.I. 15A(1).

5. The points that arise for our determination are :

- (i) whether the goods manufactured by the appellants are a resin or not;
- (ii) whether these are in such form as can be taken to be covered under Tariff Item 15A(1);
- (iii) whether these are goods for the purpose of Central Excise levy :

6. We observe that the process of manufacture by the appellants for the manufacture of phenolic formaldehyde resin is a standard process as mentioned in the standard literature. Phenol formaldehyde resin as held by this Tribunal in the case of 1987 (12) ECC 28 occur in different stages and these stages have been described as under :

"A-Stage" - An early stage in the reaction of a thermosetting resin in the phenol formaldehyde type in which the material is still fusible and wholly soluble in alcohol and acetone. Such resins are used for impregnating papers and fabrics for laminating.

"B-Stage" - An intermediate stage through which a thermosetting synthetic resin of the phenol formaldehyde type passes during the process of cure and in which the material softens when heated and will swell when immersed in liquids such

as acetone or alcohol, but yet will not entirely melt or dissolve. The resins in thermosetting moulding compounds are usually in this stages.

"C-Stage" - The final stage in the reaction of thermosetting synthetic resin of the phenol formaldehyde type. At this stage the resin is said to be fully cured, and is insoluble in acetone or alcohol and infusible."

As indicated in the same decision the term "Resin" as set out in the book Glossary of Chemical Terms" is as under :

"Any synthetic high polymer usually resulting from an addition or a condensation reaction, e.g. polystyrene, phenol formaldehyde. Such substances were originally called resins probably because some early types, such as coumarone-indene, physically resembled natural resins. Thus, the term synthetic resin, though still wide used, is strictly inappropriate, since the substances are polymeric compounds rather than mixtures of simple substances, characteristic properties of such polymers are insolubility in water, resistance to attack by Chemicals, high electrical resistivity and a smooth hard finish. Most types can be readily extruded, machine and molded, and some can be extruded into filaments and woven into fabrics. There is definite line of demarcation between thermoplastic (heat-softening) and thermosetting (cross-linked, heat stable) resins. One major group having rubber like properties is called elastomers."

In the facts before us it has not been controverted that the necessary reaction of the Chemical has proceeded to "A" Stage of the resin and a condensation product results. The goods have been manufactured for a definite end use and the adhesive properties are due to condensation that has taken place. Following the ratio of our decision referred to supra, we hold that the goods answer to the description of the term "Resin".

7. Next point to be considered is whether the appellants goods fall for assessment under T.I. 15A(1). The relevant portion of the Entry 15A at the material time is as under :

"15A : Artificial or synthetic resins and plastic materials : and other materials and articles specified below :-

(i) Condensation polycondensation and polyaddition products, whether or not modified or polymerised, and whether or not linear (for example, phenoplasts, aminoplasts, alkyds, polyallyl esters and other unsaturated polyesters, silicones); polymerisation and co-polymerisation products (for example, polyethylene, polytetrahaloethylenes, polyisobutylene, polystyrene, polyvinyl chloride, polyvinyl acetate, polyvinyl chloroacetate and other polyvinyl derivatives, polyacrylic and polymethacrylic derivatives, coumarone-indene resins); regenerated cellulose; cellulose nitrate, cellulose acetate and other cellulose esters, cellulose ethers and other Chemical derivatives of cellulose, plasticised or not (for example, collodions, celluloid); vulcanised fiber; hardened proteins (for example, hardened casein and hardened (gelatin); natural resins modified fusion (run gums);

artificial resins obtained by etherification of natural resins or of resinic acids (ester gums); Chemical derivatives of natural rubber (for example, chlorinated rubber, rubber hydrochloride, oxidised rubber, cyclised rubber); other high polymers, artificial resins and artificial plastic materials, including alginic acid, its salts and sterns : linoxyn."

The appellants have cited the case of Indian Plastics and Chemicals : 1981 ELT 108. We observe that the product in that case for consideration was phenol Formaldehyde solution which contained not more than 45% of the solid resin and the Hon"ble High Court in that case held that the solution of resin was not covered under the said tariff entry. The Hon"ble High Court took note of the fact that as set out in standard books is phenolic resin is manufactured only after dehydration; took place. We observe in the instant case before us it is an admitted position that dehydration did take place. In fact, in the two reports referred to in the proceedings, in one case the goods described are a viscous mass and in the other solid mass. Thus, it is seen the process has reached "A" Stage which is recognized phenolic resin for the purpose of assessment under T.I. 15A(1). No evidence has been produced before us that the phenolic resin manufactured by the appellants contained 20% water. Even if this position is taken to be correct the case cited by the appellants does not help them inasmuch as even the presence of this much water does not make the product of the appellants as a resin solution. We observe that the appellants dissolve the product manufactured by them in three to four times the volume for utilising it as adhesive. It is this solution which can be called a resin solution. As it is some products on manufacture retain some water in the mass manufactured but this cannot, in any way, take away the product manufactured out of ambit of 15A(1). The appellants have pleaded that the goods are not in marketable form. We observe that it is admitted by the appellants that the product can be kept and stored and has a shelf life of 4-5 days. Literature produced shows that it can be shipped in certain controlled conditions and has a sufficient long life for them to be considered as marketable. In the literature on phenolic resin as extracted in the para above shows that the phenolic based adhesives are stable for 3-6 months. The case cited supra by the appellants in the case of Geep Flash Light and Union Carbide cannot help the appellants in as much in those cases the decision was in the peculiar facts and circumstances of those cases. Here there is enough evidence on record to show that the goods can be brought to the market and Therefore these have to be held to be goods for the purpose of levy of duty. It makes no difference if the goods are captivity consumed by the appellants and they did not sell the same. In the facts of this case it is not necessary to look for evidence for actual sale of the goods. In view of amended Rule 9 and 49 there is no infirmity in law for demanding duty on the goods. The appellants appeal Therefore fails and the same is rejected.

S.D. Jha, Vice-President (J)

8. I would like to add that considering the admitted shelf life of four five days of

the product, the literature produced, even though the appellants themselves may not be marketing the product, the goods would not cease to be capable for being brought to the market to be bought and sold. Thus even on the principles enunciated in *Union Carbide India Limited Vs. Union of India (UOI) and Others*, and *the Geep Industrial Syndicate Ltd. Vs. Central Government and Others*, , the products would be marketable and goods for the purpose of Central Excise levy. I agree.