(1987) 02 CAL CK 0026

In the Calcutta High Court

Case No : Civil Rule No. 16248 (W) /75

Guardian Plasticote Ltd. APPELLANT

Vs

Assistant Collector of Central Excise and Others RESPONDENT

Date of Decision : 17-02-1987

Acts Referred:

Citation : (1987) 29 ELT 517

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : Ashoke Dey, for the Appellant;S.N. Banerjee and Abdul Rahman, for the Respondent

Judgement

Suhas Chandra Sen, J.—In this case, a rule Nisi was issued as early as on 22.8.1975. An interim order was issued restraining the respondents, the Assistant Collector of Central Excise and Ors., from giving effect to the demand of Rs. 1,07,957.56 P unconditionally for a period of four weeks and thereafter conditionally upon the petitioner''s furnishing bank guarantee for a sum of Rs. 25,000 to the satisfaction of the Registrar, Appellate Side, High Court. The bank guarantee was not furnished in time. The Court allowed the petitioners extension of time for furnishing bank guarantee on 23rd September, 1975, 21st November, 1975, 4th March, 1976 and again on 8th August, 1977. At the time of granting extension on 8.8.1977 it was made clear that time was being extended till 9th September, 1977 and no further extension will be granted. On 9th September, 1977, however, the bank guarantee was not furnished. The matter was mentioned in Court and the petitioner was given liberty to furnish cash security of Rs. 25,000/- by 12.9.1977.

2. On 21st May, 1981 the rule came up for hearing and P. K. Banerjee, J. discharged the rule on the ground that the writ petition was premature. The rule was directed against an order passed in appeal against demand raised by the Central Excise authorities, the appellate order on dated 20th February, 1975. It appeared from the affidavit-in-opposition that was filed by the respondents that

a revisional application was pending against the assessment order as well as the appellate order.

3. On 17th September, 1981 the order passed on May 21, 1981 was recalled and on 9th April, 1985 an order was passed for maintaining status quo in respect of the demand raised by the Excise Department. It was admitted both on behalf of the petitioners as well as the respondents that the attachment of some of the petitioners made by the Excise Department will continue.

4. The matter finally came up for hearing on 7th August, 1986 and was adjourned till 18th August, 1986. On 13th November, 1986 the matter was once again adjourned on the prayer of the petitioners to 1st December, 1986. On 2nd December, 1986 the case was once again adjourned. On 18th December, 1980 when who matter was called on, no one appeared for the petitioners. The case was adjourned to 12th January, 1987. On 12th January, 1987 the case was adjourned once again and fixed peremptorily for hearing on 6th February, 1987. It appeared on the list on 6th February, 1987 and it was finally called on for hearing on 10th February, 1987. Once again no one has appeared for the petitioners. The case is, therefore, disposed of after hearing the respondents.

5. The case of the Excise Department is that the dispute is about the classification of the product manufactured by the petitioners. M/s. Guardian Plasticote Limited, Rampur, District 24-Parganas, the petitioners manufactured and cleared plastic coated cotton fabrics on payment of duty under T.C. 19(0(2) for some period of time. A show cause notice was issued on 6.6.1972 about short payment of central excise duty amounting to Rs. 1,07,957.56P.

6. It is claimed by the Assistant Collector of Central Excise, Calcutta, that on physical verification of the cotton fabrics and chemical test it was noticed that the coating was 100% polythene and was applied on the cotton fabrics by extrusion technique. The polythene film was fixed to the base fabrics and could not be easily separated. After analyzing the fabric, and the technique of coating it was held that the interlinings as well as other products made in this manner were classifiable as fabrics impregnated or coated with preparation of cellulose derivative or of other artificial plastic material falling under T.C. 19(III) and duty should be paid at the rate of 25% ad valorem. The differential duty was calculated to be Rs. 1,07,957.56P. After hearing the parties, a sample was drawn and it was held that the product manufactured by the petitioners was correctly classifiable under T.C.19(III). A demand for the differential duty was raised by the Assistant Collector of Central Excise.

7. On appeal it was held by the Appellate Collector of Central Excise relying upon a report given by the Deputy Chief Chemist on spot examination of the process of manufacture in the appellant''s factory. It was found that polythene granules were taken in the extruder from which molten polythene in the form of hot thin film fell on the nip between the rubber roll containing fabrics and a cold roll and instantaneously adhered to the fabrics and became firmly fixed on the fabrics by

calendering effect of the cold roll. Thus the film still hot and to some extent molten, was affixed to the fabrics and cold pressed. The process in the manufacture of the goods in question could not be taken as lamination in the true sense of the term. The process really was coating impregnation.

8. The dispute is basically a question of fact. No one has appeared on behalf of the petitioners and it appears that the order of the Appellate Collector was not erroneous. Under these circumstances, the rule is discharged. All interim orders are vacated.

There will be no order as to costs.

9. After the case was fixed the matter was mentioned by Mr. Asoke Dey, learned Advocate for the petitioners and I gave liberty to the petitioners to address the Court before the judgment was delivered. No argument has been advanced on behalf of the petitioners, but a prayer was made for further adjournment on the ground of the Senior Counsel appearing on behalf of the petitioners. I have decided not to allow this prayer.

10. If the petitioners have deposited a sum of Rs. 25,000/- (Rupees twenty five thousand), the respondents would be at liberty to withdraw the amount and appropriate it towards the part satisfaction of their claim.

11. The Rule is discharged without any order as to costs.