

(1997) 05 AHC CK 0190

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1072 of 1983

Hindon Rubbers Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-05-1997

Acts Referred:

Central Excise Rules, 1944 — Rule 49, 9

Central Excises and Salt Act, 1944 — Section 11, 11A, 2, 3

Citation : (1997) ECR 12 : (1997) 93 ELT 332

Hon'ble Judges : P.K. Jain, J;Om Prakash, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. List has been revised. None appears for the respondent. We have therefore, heard only counsel for the petitioners.
2. It is regretfully pointed out that in excise and custom matters involving highest stakes no one is putting in appearance for the respondents and, therefore, most of the cases go unattended on behalf of the respondents.
3. By this petition, petitioners seek quashing of the impugned notice dated 11-3-1983 and 29-4-1983 purporting to have been issued u/s 11 of the Central Excises and Salt Act, 1944 (briefly "the Act").
4. By the impugned notices, the petitioners were called upon to show cause as to why duty on rubberised cotton fabric be not levied u/s 11A of the Act.
5. The contention of the petitioners is that petitioner No. 1 - a company duly incorporated under the Companies Act, 1956 - is engaged in the manufacture of rubber beltings and allied rubber products, that during the course of manufacturing of rubber beltings, an item called "rubberised cotton fabric" which is also known as "friction cloth" in technical parlance, comes into existence and is captively consumed by the company in the manufacture of its product; that rubberised cotton fabric - an intermediary product - which is used captively,

is neither sold nor can be sold in the market by the petitioners and the intermediary product, namely, the rubberised cotton fabric is not goods within the meaning of the Act and hence that is not eligible to excise duty.

6. In para 6 of the counter affidavit it is admitted that the rubberised cotton fabric comes into existence in the process of the manufacture of the rubber belting. However, it is averred in the said paragraph that rubberised cotton fabric is a separate identifiable product and that is separately classified under Tariff Item 19(1)(b). In para 8 of the Counter affidavit, it is further admitted that rubberised cotton fabric is not sold by the petitioners. It is, however, averred that rubberised cotton fabric is marketable, inasmuch as, nowadays even the wastes are marketable. "In para 19 of the Counter affidavit it is reiterated that the rubberised cotton fabric is not sold by the petitioners and it is further admitted that the rubberised cotton fabric is being cleared for captive consumption in different tariff items and is being consumed as such."

7. The question for consideration is whether the rubberised cotton fabric captively consumed by the petitioners, comes within the expression "goods" within the meaning of the Act, In Punjab Rubber and Allied Industries and Others Vs. Union of India (UOI) and Others, , a learned single Judge of the Punjab and Haryana High Court on almost similar fact situation held as follows :-

"Under Section 2(d) of the Act, excisable goods have been defined to be goods specified in First schedule as being subject to a duty of excise. It is provided in Section 3 of the Act that excise duty on all excisable goods which are manufactured in India shall be levied at the rates set forth in the First Schedule. According to Item No. 19 of this schedule, cotton fabrics subjected to process mentioned therein are liable to excise duty at the rate of 25 per cent ad valorem. The goods manufactured by the petitioners viz. transmission belting V shaped belts, etc. are liable to excise duty at the rate of 24 per cent ad valorem under Item No. 16 of the First Schedule. It is manifest from a reading of the above statutory provisions contained in the Act, Schedule or rules that excise duty is leviable only on those articles which are goods and which articles ordinarily comes to the market to be bought and sold and are known to the market. Any intermediary product which comes into existence during the process of manufacturing of transmission or V shaped belts etc. has not been expressly and in clear terms made subject to excise duty. This friction cloth which is an intermediary product produced during the process of manufacture of the above-mentioned articles is not sold or purchased in the market."

8. In Union of India (UOI) Vs. Delhi Cloth and General Mills, , it has been held that to become goods an article must be some thing which can ordinarily come to the market to be bought and sold.

9. Since the so called friction cloth sought to be made excisable is only an intermediary products and is used captively for further manufacture of rubber beltings and allied rubber products and it not bought or sold as such, we

following the aforesaid decisions are of the view that rubberised cotton fabric/ friction cloth cannot be termed to be goods as contemplated in the charging Section 3 of the Act.

10. In para 6 of the counter affidavit, a reference is made to the amendment of Rules 9 and 49 of the Central Excise Rules, 1944 ("the Rules" for short). In para 19 of the Counter affidavit it is further stated that according to revised Rule 9, the rubberised cotton fabric is cleared for captive consumption in different items and is being consumed as such and that according to amended Rule 9 the rubberised cotton fabric should be cleared on payment of duty under Tariff Item No. 19-I(b). In *South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others*, adverting to Rules 9 and 49 of the Rules, the Apex Court said as under :-

"Since this intermediary products is not an excisable article in itself, the amendments by way of explanations introduced in Rules 9 and 49 of the Rules do not change the situation. These two explanation only make those intermediary articles liable to excise duty which independently fall within the definition of any of the ensures in the First Schedule."

11. The intermediary product captively consumed, in our view, does not independently fall within the definition of any of the entries in the First Schedule. The amended Rules 9 and 49 are not attracted.

12. For the above reasons, we accept the contention of the petitioners that the friction cloth is not eligible to duty.

13. In the result, the petition succeeds and is allowed. The impugned notices dated 11-3-1983 and 29-4-1983, Annexure 8 and 10 to the writ petition, respectively, are quashed dated 15-5-1997