

(1980) 10 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 155 of 1979

Jeep Flashlight Industries Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-10-1980

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Central Excises and Salt Act, 1944 — Section 36
Constitution of India, 1950 — Article 15A(2), 226
Tariff Act, 1934 — Section 2A

Citation : (1985) 19 ELT 68

Hon'ble Judges : R.M. Sahai, J; H.N. Seth, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

H.N. Seth, J.—By this petition under Article 226 of the Constitution the petitioner challenges the validity of order No. 13/66 of 1978 dated 26th December, 1978 passed by the Government of India u/s 36 of the Central Excises and Salt Act, 1944 rejecting the revision application of the petitioner filed against the order of the Appellate Collector, Central Excise, New Delhi, dated 30th January, 1976 in Appeal No. 69-C.E./ 76 whereby the Appellate Collector, Central Excise, upheld the order dated 13th August, 1975 passed by the Superintendent, Central Excise, Allahabad, holding that plastic torches manufactured by the petitioner were liable for the levy of excise duty under Tariff Item No. 68 of the Central Excise Tariff and not under Tariff Item No. 1 5A(2) of the same Tariff.

2. The petitioner manufactures flashlights, main bodies of which are made of brass, aluminium and plastic. Such flashlights are known as brass, aluminium and plastic torches respectively. For manufacturing plastic torches the petitioner has been granted industrial licence dated 22-5-1974 under the Industries (Development and Regulation) Act, 1951, Item No. 12(1) of the First Schedule of which requires obtaining of such licence in respect of plastic moulded goods. The petitioner also obtained a licence for manufacturing articles covered by entry at

Item No. 68 of the First Schedule of the Excise Act which, according to it, authorised it to manufacture brass and aluminium torches as well.

3. Prior to the enforcement of the Finance Act of the year 1975, the position was that whereas excise duty was payable on the manufacture of articles made of plastics all sorts under Tariff Item No. 15A(2), there did not exist any item like Item No. 68 in the Tariff providing for duty on manufacture of goods not otherwise provided for in the Schedule. Thus prior to coming into force of the Finance Act of the year 1975, there was no provision for charging excise duty on the manufacture of brass and aluminium torches which admittedly were not made out of plastic. It may also be mentioned at this stage that under Notification No. 68/71-C.E., dated 29th May, 1971, the Central Government had exempted articles made of plastic, all sorts, falling under sub-item (2) of Item No. 15A of the First Schedule of the Central Excises and Salt Act, 1944, from payment of excise duty in a case where such articles were produced out of plastic on which the duty of excise or the additional duty u/s 2A of the Indian Tariff Act, 1934, as the case may be, had already been paid. The licence issued to the petitioner under the provisions of the Industries (Development and Regulation) Act, 1951 for manufacture of plastic torches issued on 22nd August, 1972 shows that the petitioner had been licenced to manufacture plastic torches out of duty paid plastic material. This licence was renewed from time to time. While renewing the said licence on 28-9-1975 for the year 1976, the licensing authority made it clear that the licence issued shall, instead of enabling the petitioner to manufacture plastic torches out of duty paid plastic material, enable it to manufacture plastic articles out of duty paid plastic material. Since the petitioner was manufacturing plastic torches by using duty paid plastic material, the manufacture of this article, if it fell under Tariff Item No. 15A(2) was exempt from payment of excise duty and in case it did not so fall, there was no other item under which any duty in respect of manufacture of such articles could be charged.

4. On coming into force of the Finance Act of 1975 inserting Item No. 68 in the First Schedule of the Central Excises and Salt Act providing for payment of duty on manufacture of articles not otherwise provided for, there ensued a controversy between the petitioner and the Central Excise Department on the question as to whether the plastic torches manufactured by the petitioner were covered by Item No. 15A(2) or by Item No. 68 of the First Schedule of the Central Excises and Salt Act. Whereas the petitioner claimed that the plastic torches manufactured by it were articles made of plastic and were as such covered by Item No. 15A(2), the case of the Excise Authorities was that such torches could not be said to be articles made of plastic and, as such, these were not covered by Item No. 15A(2) but were eligible to excise duty under the residuary Item No. 68 of the First Schedule of the Central Excises and Salt Act. Consequently, when the petitioner submitted a classification list showing against column No. 5 that it was manufacturing plastic torches covered under Tariff Item No. 15A(2), the Superintendent, Central Excise Allahabad, by his order dated 13th August, 1975,

amended the said classification list and directed that as the article mentioned against column No. 5 (plastic torches) was covered under Item No. 68 the said article may be treated to have been mentioned as a part of Serial No. 4 of the classification list (i.e. an article eligible to duty under Tariff Item No. 68) and that the particulars against serial No. 5 were shown as nil.

5. Being aggrieved the petitioner went up in appeal before the Appellate Collector, Central Excise- The Appellate Collector, dismissed the appeal by his order dated 30th January, 1976. While dismissing the appeal the Appellate Collector held that the reliance placed by the petitioner on paragraph 39.07(0(4) of Brussels Nomenclature was misplaced and made the following observations :

"I observe that in order to classify a particular item, it is necessary to know how it is known in trade parlance. A torch is not known as an article of plastic in trade. A torch has an identity of its own. Its meaning in the Chambers 20th Century Dictionary (New Edition 1972) is "portable electric lamp". A torch is therefore a portable electric lamp and not an article of plastic. I further find that "portable electric lamps" are covered under heading 85.10 of Brussels Nomenclature as given under:

"85.10. portable electric battery and magneto lamps, other than lamps falling within heading No. 85.09"

"This heading covers portable electric lamps designed to function by means of self contained source of electricity (e.g. dry cell accumulator or magneto)."

The above interpretation is confirmed by Item No. 6 of the above heading of Brussels Nomenclature wherein it is stated that "composite articles composed of lamp or torch and an open screw driver, key ring, etc" remain classified here only if the main function of the whole is the provision of light.

In view of the observations and discussion a torch cannot be said as an article of plastic as pleaded in the appeal. It follows from this that it is an article assessable under Item No. 68 of the Central Excise Tariff as "all other goods, not elsewhere classified". The impugned order of the Superintendent is, therefore, upheld and the appeal is rejected."

6. The petitioner then took the matter up in revision before the Central Government. On 26th December, 1978 the Central Government dismissed the revision application filed by the petitioner and made the following order :-

"Government of India have considered the points raised in the revision application and those urged during the personal hearing and have examined the records of the case.

The petitioners have urged that the torch in question is known in the market as plastic goods. The article made of plastic is not the name of any specific article but only signifies the dominant raw material content of an article so as to bring it within the scope of Central Excise Tariff Item 15A(2). There are large number of

articles which are known by their specific names such as buckets, baskets, etc. but these are not called by the buyers and sellers as "articles made of plastic" although they are made entirely of plastic. They have accordingly contended that the goods in question are assessable under Tariff Item 15A(2) and not under Central Excise Tariff Item 68.

Government of India observe that Central Excise Item 15A (2) does not cover articles like torches as indicated by the illustration after word "including". In view of that, petitioner's plea that the goods involved are classifiable under the said Tariff item is not tenable.

The revision application is accordingly rejected."

7. Having failed to persuade the respondents to accept its contention that the plastic torches manufactured by it fall under Tariff Item No. 15A(2) and not under Item No. 68 of the Central Excise Tariff, the petitioner has approached this court for relief under Article 226 of the Constitution.

8. Learned Counsel for the parties are agreed that in case the plastic torches manufactured by the petitioner do not fall under Tariff item No. 15A (2), they would fall under Tariff item No. 68 and that in case they fall under Tariff item No. 15A(2) they would not fall under Tariff item No. 68. The controversy between the parties, therefore, resolves itself into one question only, namely, whether or not the plastic torches manufactured by the petitioner fall under Tariff Item No. 15A (2).

9. A perusal of the order passed by the Central Government shows that relying upon the following portion in Tariff item No. 15A (2) :-

"Articles made of plastics, all sorts, including tubes, rods, sheets, foils, sticks, other rectangular or profile shape whether laminated or not, and whether rigid or flexible including lay flat tubings and polyripyl chloride sheets..."

it took the view that plastic torches manufactured by the petitioner do not fall under Tariff item No. 15A(2) as they are not articles like tubes, rods, sheets, foils, sticks, other rectangular or profile shape or the like mentioned in that article. In its view use of words "including" after words "articles made of plastics, all sorts" and before the words "tubes, rods, sheets, foils, sticks, other rectangular or profile shape..." indicates that only articles partaking the nature of the articles mentioned therein can be said to be articles falling under Tariff Item No. 15A(2). According to it the illustrations given in the sub-item were intended to clarify what the legislature meant by the expression "articles made of plastics, all sorts". We are, however, unable to endorse the line of reasoning adopted by the Central Government for holding that plastic torches manufactured by the petitioner cannot fall under Item No. 15A(2) of the Schedule.

10. Use of the word "including" in Item No. 15A(2) merely clarifies that tubes, rods, sheets, foils, sticks, other rectangular or profile shape whether laminated or not, and whether rigid or flexible including lay flat tubings and polyripyl

chloride sheets, if made of plastics, would in any case be covered by that Tariff Item. This word was not used with a view to restrict the meaning of the words "articles of all sorts" to articles which belonged to the class of tubes, rods, sheets etc., made of plastic. In our opinion all articles made of plastic whether or not they partake the nature of goods like tubes, rods, sheets, foils etc , specifically mentioned in Article 15A(2) would be covered by the Article.

11. Crucial question that arises for consideration in this case is whether the plastic torches manufactured by the petitioner can, as contemplated by sub-Item (2) of item 15A be said to be an article made of plastic.

The goods on which excise duty has been made leviable under tariff item 15A have been described thus :-

15A. Artificial or Synthetic resins and plastic materials and Cellulose esters and ethers and articles thereof :-

(1) The following artificial or synthetic resins and plastic materials, and cellulose esters and ethers, in any form, whether solid, liquid or pasty, or as powder, granules or flakes; or in the form of moulding powders, namely-

(i) Condensation, Polycondensation and polyaddition products, whether or not modified or polymerised, and whether or not linear such as Phenoplasts, Aminoplasts, Alkyds, Polyamides, Super polyamides, Polyesters, Polyallyl esters, Polycarbonates Polyethers, Polyethylenelmines, Polyurethanes Explosive Resins and silicones ;

(ii) Polymerisation and copolymerisation products such as Polyethylene, Polytetrachaloethylenes, Polyisobutylene, Polystyrene, Polyvinyl Chloride, Polyvinyl acetate, Polyvinyl Chloroacetate and other polyvinyl derivatives, Polyacrylic and Polymethacrylic derivatives and coumarone Indene Resins; and

(iii) Cellulose acetate (including cellulose diacetate or cellulose triacetate), cellulose acetate butyrate and cellulose propionate, cellulose acetate propionate, Ethylcellulose and Benzyl cellulose, whether plasticised or not and plasticised cellulose nitrate.

(2) Articles made of plastics, all sorts, including tubes, rods, sheets, foils, sticks, other rectangular or profile shapes whether laminated or not, and whether rigid or flexible, including lay flat tubings, and polyvinyl Chloride sheets, not otherwise specified.

(3) Polyurethane foam.

(4) Articles made of Polyurethane foam.

Explanation I.-For the purpose of sub-item (2), "Plastics" means the various artificial or synthetic resins or plastic materials or cellulose esters and others included in sub-item (1).

Explanation II.-This item does not include electrical insulators or electrical

insulating fittings or parts of such insulators or insulating fittings.

12. As the heading of the item indicates, it provides for payment of excise duty on manufacture of artificial or synthetic resins and plastic materials and cellulose esters and ethers as also on the manufacture of articles made therefrom. Clauses (i), (ii) and (iii) of sub-item (1) describe artificial or synthetic resins and plastic materials, and cellulose esters and ethers, which when manufactured in any form whether solid, liquid or pasty, or as powder, granules or flakes or in the form of moulding powder would attract payment of excise and special excise duty mentioned therein. It is significant to note that the material mentioned in sub-item (1) is manufactured not for the purpose of being directly put to use in the same condition in which it is manufactured. The object with which such material is manufactured is to use it as raw material in manufacturing various articles which are generally sold in the market for being used as such. What sub-item (2) read in the light of Explanation I means is that manufacture of articles made of various articles or synthetic resins or plastic materials or cellulose esters and ethers mentioned in sub-item No. (1) would also attract payment of duty. The scheme underlying the tariff item makes a clear distinction between the plastic material described in sub-item No. (1) and the articles made therefrom. Sub-item No. (2) covers only those articles which after being manufactured, are meant to be sold for being used as such, but then as it was intended to levy duty on tubes, rods, sheets, foils, sticks, other rectangular or profile shapes etc, mentioned in sub-item (2) manufactured from the material mentioned in sub-item (1) which are generally not meant to be used as such but are meant to be converted into some other article. Accordingly it has, in sub-item (2) been provided that articles made of plastics, all sorts, would include the aforementioned items as well and that manufacture of such item would also attract payment of excise duty. Likewise, sub-item (2) provides for payment of excise duty on manufacture of polyurethane foam and sub-item (4) provides for payment of excise duty on manufacture of articles made of such foam. The scheme underlying tariff item 15A thus envisages that whereas the manufacture of material [sub-item Nos. (1) and (3)] as also the articles manufactured from such material [sub-item Nos. (2) and (4)] attract payment of excise duty, manufacture of a commercial articles by using the articles covered by sub-item Nos. (2) and (4) do not attract excise duty under this item. Of course as has been clearly mentioned in this item where there is any specific entry dealing with a particular article then notwithstanding that such article is made of material mentioned in sub-item No. (I) it would still not attract duty under sub-item No. (2) and that the duty payable in respect thereof will be governed by the specific article.

13. We may, at this stage, note that until 1st March, 1975 when Tariff Item No. 68 was added to the schedule, there was no item dealing with payment of excise duty on manufacture of goods not covered by one or the other tariff item. Consequently, if any goods, not covered by any specific tariff item, was manufactured by using articles covered by sub-item (2) of tariff item No. 315A, it

did not attract payment of excise duty. However, as a result of introduction, in the year 1975, of tariff item No. 68 providing for payment of duty on all other goods not elsewhere specified, the position underwent a change and manufacture of articles or goods by utilising articles mentioned in sub-item Nos. (2) and (4) of item No. 15A also attracted payment of excise duty under tariff item No. 68 at a rate which is certainly less than the rate of duty laid down in tariff item No. 15A.

14. It is in the light of aforesaid discussion that we now proceed to examine whether the plastic torches manufactured by the petitioner can, as contemplated by sub-item No. (2) of tariff item No. 15A, be said to be articles made of plastic.

15. Parties are agreed that the article manufactured by the petitioner which is being described as a plastic torch is a contraption, main body of which is made of plastic. It has a switch affixed to it and also has certain metal parts together with reflector and glass as its components. The main body of the torch, which the petitioner manufactures, is undoubtedly made from articles or synthetic resins or plastic material mentioned in sub-item No. (1) and is as held by this Court in the case of Union of India and Ors. v. Union Carbide India Ltd- 1972 A.L.J. 451, an article which can be called a "tube". The torch, which is manufactured by the petitioner by affixing switches, reflectors, bulbs and other metallic parts to its plastic body (tube) undoubtedly is commercial article which is different from its body (tube) falling under Tariff Item 15A(2). Accordingly, even if it be assumed that the flash light manufactured by the petitioner is, as urged by the learned counsel for the petitioner, made of its main component "namely, torch body, it still would merely be an article made of an article of plastic as distinguished from an article made from the material mentioned in sub-item (1) of Tariff Item No. 15A and would in any case fall outside the ambit of tariff item No. 15A (2).

16 We are accordingly of opinion that the torches manufactured by the petitioner cannot be said to be articles made of plastic as contemplated by sub-item No. (2) of tariff item 15A and that its manufacture attracts duty under tariff item No. 68 which provides for payment of duty on goods not elsewhere specified.

17. Learned counsel for the petitioner contended that in order to qualify as an article made of plastic all that is necessary to be shown is that the article has been fashioned out of plastic or the plastic form part of its material component. According to him an article can be said to be made of plastic if its dominant component is made of plastic. It is immaterial if it also has other components which are made of material which is different from plastic. He urged that as the main body of the torches manufactured by the petitioner, constituting its dominant component, is admittedly made of a plastic it should irrespective of the fact that it has non-plastic components as well, be considered to be an article made of plastic.

18. Learned counsel appearing for the respondents on the other hand contended that considering the mechanism of a flash light torch, it is obvious that its

manufacture can never be considered to be complete without its non-plastic components like the switch, reflector, bulb and other metallic parts being there. In the circumstances it cannot be said that the torch is made of the material from which one of its component viz. its body to which these various items are affixed is made.

19. A perusal of tariff item 15A shows that under this item fairly high rate of excise duty has been imposed on manufacture of plastic material mentioned in item No. 15A(1) as also on the manufacture of articles made therefrom (50% ad valorem plus 5% basic duty at each stage). As already explained under this item the legislature did not intend to impose any duty on articles manufactured by converting articles made of plastic into a different commodity not made directly from the material described in sub- item No. (1) of tariff item 15A. In the context aforementioned submissions made by learned counsel for the parties are off the mark and it is not necessary for us to make any comment thereon.

20. Learned counsel for the petitioner next contended that tariff items should be understood and interpreted not in a scientific or technical sense but as a common man or man of common sense would understand the same. According to him, the trade as well as common man calls the article manufactured by the petitioner, "a plastic torch" or "a torch made of plastic". Learned counsel also relied upon the initial licence granted to it in the year 1972, its renewal in the years 1973-74 and 1974-75 and approval given by the respondents to the classification list on 13th March, 1975 and contended that what to say of trade or common man, even the respondents have been treating the torches manufactured by the petitioner as articles made of plastic. Viewed in this light the torches manufactured by the petitioner should be considered to be articles or goods falling within the ambit of tariff item No. 15 A(2),

21. Learned counsel supported the aforesaid submission made by him by relying upon a decision of the Supreme Court in the case of Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, wherein the question that came up for consideration before the Supreme Court was as to whether betel leaves were "vegetables" within the meaning of expression as used in item no. 6 of schedule II of the C.P. and Berar Sales Tax Act (sale of vegetables under the C.P. and Berar Sales Tax Act exempt from payment of sales tax). In this case the Supreme Court, after noticing certain earlier decisions observed that the said words in C.P. and Berar Sales Tax Act must be construed not in any technical sense Nor the botanical point of view but as understood in common parlance. The expression had not been defined in the Act and it being a word of every day use, it must be construed in its popular sense meaning that sense which people, conversant with the subject matter with which the statute is dealing attribute to it. This decision, in our opinion, merely emphasised that where in statutes like the Sales Tax Act and other fiscal enactments, a word of every day use is mentioned and the scope and meaning of that word in technical or scientific and in common parlance, is not the same, it should in such statute, be given the

meaning which is generally given to it by a person in trade or the common man and should be interpreted in the sense the person conversant with the subject matter of statute and dealing with it would attribute to it. No question or resolving such a controversy or of preferring one meaning to the other would arise where the words used in the statute are not capable of being used differently in technical or scientific sense and in common parlance. The Supreme Court decision also does not rule out the implication which a particular word carries in the context in which it has been used. As a matter of fact, learned Judges while holding that betel leaves, though technically vegetables, were not to be included in the expression "vegetable" as used in the Act, themselves relied upon the context and pointed out that the provisions contained in the Act itself made it out that the legislature did not consider that betel leaves were vegetables in the sense in which the word has been used in the Act. We have carefully examined the decisions in the cases of Commissioner, Sales Tax, U.P., Lucknow Vs. Prayag Chemical Works, Naini, Allahabad, , Spheroidel Castings Ltd. v. The State of Tamil Nadu 1977 S.T.C. 597, Porritts and Spencer (Asia) Ltd. v. State of Haryana (1979 (2) U.P.T.C. 866 in this respect and we do not find anything in these cases which runs counter to the aforementioned discussion made by us. It has nowhere been said in any of these cases that even if the context in which a particular expression has been used offers a clue for giving to it a particular meaning, it should still be interpreted in a popular sense and not in the sense sought to be conveyed by the rule making body. For the same reason we think that the reliance placed by the learned counsel for the petitioner on the cases of Jagabandhu Roul Vs. State of Orissa, , Dina Nath Lassiwalla Vs. The State of U.P., , Industrial Chemical Corporation Vs. Commissioner of Sales Tax, , Commissioner, Sales Tax Vs. Lucknow Co-operative Milk Supply Union Ltd., and Kwality Ice Cream Company and Restaurant Vs. The Sales Tax Officer, New Delhi, which according to him lay down that an article is known by the dominant material forming one of its component would also be of no avail, as in our opinion there is clear indication in the wordings of tariff item 15A that the words "articles made of plastics" used in sub-item (2) do not cover such articles which are not directly made from the material indicated in sub-item (1), but are made from articles made out of such material.

22. Learned counsel for the petitioner next contended that the petitioner had been manufacturing the flash lights ever since the year 1972 after obtaining licence for the purpose from the respondents. On 22nd August, 1972 the petitioner was granted licence for manufacturing articles made of plastic (plastic torches) from out of duty paid plastic material. The respondents, therefore, while granted licence to the petitioner were themselves of opinion that plastic torches manufactured by the petitioner were articles made of plastic. The said licence was change being made therein. However, when the said licence was put up for renewal on 28th of November, 1975, the respondents unilaterally and without authority changed the words "plastic torches" occurring in the licence into "plastic articles". This shows that right until the year 1976 the respondents

themselves were treating the article manufactured by the petitioner as falling under tariff item 15A(2) as an article made of plastic. Since the petitioner was manufacturing such article from out of duty paid plastic material, the same was, under a notification No. 68/71-C.E., dated 29th May, 1971 issued under Rule 8(1) of the Central Excise Rules, exempt from payment of duty. When in the year 1975 tariff item No. 68 was added to the tariff providing for payment of duty on manufacture of articles not provided for elsewhere, the respondents thought of levying duty on the petitioner and that is why they changed the entry in their licence from "plastic torch" to plastic articles. Learned counsel for the petitioner contended that this shows that the respondents themselves have been throughout treating plastic torches manufactured by the petitioner as falling under tariff item No. 15A(2) and that they are changing their stand merely with a view to demand excise duty from the petitioner. The change of opinion by the respondents is accordingly without basis and the respondents cannot be allowed to do so. In support of this submission learned counsel strongly relied upon a decision of the Bombay High Court in the case of Sri Vijaysinh Virchand v. S.K. Bhardwaj, Assistant Collector of Central Excise (Misc. Petition No. 767 of 1953 decided on 19th July, 1979 since reported in 1980 CenCus 422D). He also relied upon following three trade notices issued by the Collector of Bangalore, Madurai and Central Board of Excise :-

1. Plastic bangles which are made by affixing the cellulose nitrate sheets pasted with zari to the Cylindrical tubes made of cellulose acetate moulding granules, are articles of plastic falling under sub-item (2) of item 15A of the Central Excise Tariff" and exempted under Government of India notification No. 68/71-C.E., dated 25-5-1971, and that no duty is, therefore, leviable on such plastic bangles under item 68 of the Central Excise Tariff.

Bangalore Trade Notice No. 37/76 C.E., dated 13-2-1976.

2. Articles of plastic-It is clarified that (i) all articles composed wholly of plastic whether composite or separable (consisting of different components) should be deemed to be classifiable under item No. 15A(2) of the Central Excise Tariff and (ii) articles made out of plastic and known plastic materials, whether composite or not which are essentially made of plastic may be deemed to be covered under the said item.

Madurai Trade Notice No. 148/76 (4 Plastics 76), dated 18-6-1976.

3. Plastics articles. A doubt has been raised whether plastic articles would be leviable to central excise duty under tariff item 68 or under item 15A of the Central Excise Tariff. It is clarified for the information of the trade that articles of plastics as covered by the Brussels Tariff Nomenclature Item 39.07 would not attract duty under tariff item 68, as they would fall under tariff Item 15A. It would be seen that a list of articles which are excluded from this item is also given. It may be noted that the Articles, so specially excluded and also those articles of plastic which are not mentioned in this chapter will automatically fall

under tariff item 68.

C.B.E. & C. Letter No. 35/68/75-CX. 4, dated 16-1-76.

and urged that these trade notices are binding upon the respondents. He contended that a perusal of these trade notices go to show that the article, major component of which is plastic, would be covered by the expression "article made of plastic used in tariff item No. 15A(2) and the respondents would not be justified in treating the same as an article covered by tariff item No. 68.

23. It is true that the form in which the licence was issued to the petitioner in the year 1972 for manufacturing plastic torches indicates that the respondents at that stage had permitted the petitioner to manufacture plastic torches out of duty paid plastic material on the basis that plastic torches were articles of plastic. Further while approving the classification list in March, 1975 they accepted that the petitioners were manufacturing torches (flash light cases) in types (varieties) other than plastic torches which were already covered by Tariff Item No. 15A(2) as plastic articles (annexure to the supplementary affidavit of Alia Uddin Siddiqui filed on 4-7-1980. It is, therefore, quite likely that the respondents were also, at that stage, of opinion that the plastic torches manufactured by the petitioner would fall under Tariff Item No. 15A(2). However, the question that arises for our consideration is whether the respondents are bound by such an impression.

24. In the case of *Vijaysinh Virchand v. S K. Bhardwaj*, Assistant Collector, Central Excise (1980 Cen. Cus., 422D) the Bombay High Court came to the conclusion that on the facts of that particular case the Central Excise Authorities had throughout treated the product in question was liable to duty under Item No. 15A(2) and that the change in the opinion of the Superintendent, Central Excise, was without basis. The question that arose for consideration before the Bombay High Court in that case was whether Heat Sealing Tapes manufactured by the petitioner was liable to excise duty under Item No. 15A(2) or was it liable to duty on the tapes manufactured by him under Tariff Item No. 15A(2), the petitioner objected to it but his objection was overruled and even the appeal filed by him was dismissed. Subsequently, the petitioner, in respect of the tapes manufactured by him, became exempt from payment of excise duty payable by him under Tariff Item No. 15A(2). At a later stage, Tariff Item No. 59 was introduced and the Superintendent, Central Excise called upon the petitioner to pay duty in respect of the tapes manufactured by him under Tariff Item No. 59. The petitioner filed writ petition before the Bombay High Court and the controversy before the High Court was whether tapes manufactured by the petitioner fell within Tariff Item No. 15A(2) or Tariff Item No. 59. This learned Judge, who disposed of the writ petition, after noticing the submissions made by the various parties, observed thus:-

"I am not reversing the decision of the authorities below merely because I feel that the product of the petitioner falls under one or other item, but I am reversing the order, as in my judgment, the authorities themselves were not sure

as to under which item the article is liable to duty and in fact the superior officer, Superintendent, Central Excise, had decided that the product is liable to duty under Item No. 15A(2)."

It thus appears that the real reason why the learned Judge bound the department to the position that the heat sealing tapes manufactured by the petitioner of that case fell within Tariff Item No. 15A(2) was that there was a difference of opinion in this regard within the department itself and that an authority superior to the Superintendent had already decided that the item fell within the ambit of Tariff Item No. 15A(2). In the case before us, however, there is no such difference of opinion amongst the departmental authorities and the highest authority which was expressed its opinion so far has taken the view that the torches manufactured by the petitioner do not fall under Tariff Item No. 15A(2). Further, a case where authorities, "have despite objections, been insisting that a particular Item fell within a particular entry and then they change their opinion with a view to subject the manufacturer to more duty, may stand on a different footing and it may be possible to contend in such a case that the departmental authorities should not be allowed to change their stand. However, such would not be the position in a case like the one before us. When in the year 1972 the petitioner applied for manufacturing flash light torches, body of which was made from duty paid plastic material, the manufacture of such article was exempt from payment of excise duty. At that time residuary item 68 not being there, the flash light torches manufactured by the petitioner from the plastic body also was not liable to excise duty. In the circumstances at that time the petitioner was not liable to pay duty either on the torch bodies manufactured by it or on the manufacture of flash light torches. The question whether the plastic bodies manufactured by the petitioner alone or the complete flash light torch manufactured by the petitioner fell within the ambit of Tariff Item 15A(2) was not of much consequence. The question became material only after the introduction of Tariff Item No. 68 in the year 1975. There is nothing on the record to indicate that after 1975 the respondents despite objection being raised by the petitioner treated the complete flash lights manufactured by the petitioner as falling within the ambit of Item No. 15A(2). In our opinion the respondents cannot be bound to a view which they held at a time when holding of that view or otherwise was not a matter of any consequence. The petitioner has not been prejudiced in any manner by the alleged change in the view of the respondents.

25. Coming now to the three trade notices relied upon by the petitioner the first of the three notices merely mentions that the plastic bangles which are made by affixing the cellulose nitrate sheets pasted with zari to the cylindrical tubes made of cellulose acetate moulding granules, are articles of plastic falling under sub-item (2) of Item 15A of the Central Excise Tariff and exempted under Government of India Notification No. 68/71-C.E., dated 29th May, 1971. The item referred to in the trade notification is an article which is made of the material mentioned in the sub-item No. (1) of item No. 15A and all that notification means is that it does not cease to be that article merely because it is

ornamented by pasting cellulose nitrate sheets with Zari. There is nothing in this notification to indicate that the Articles made of plastic are distinguished from the articles made from the plastic material mentioned in sub-item No. (1) would be articles falling within the ambit of sub-item (2) of item 15A.

26. So far as the second trade notice relied upon by the counsel for the petitioner is concerned it merely clarifies that (i) all articles composed wholly of plastic whether composite or separable (consisting of different components) should be deemed to be classifiable under Item No. 15A(2) of the Central Excise Tariff and (ii) articles made out of plastic and known plastic materials, whether composite or not which are essentially made of plastic and commercially known as articles of plastic may be deemed to be covered under the said item. This notification in our opinion does not dwell on the controversy on the question in issue before us. It only envisages that there may be an article of plastic even though it may also contain non-plastic material and that it may have various components.

27. The third trade notice merely clarifies that the articles which have been classified in the Brussels Tariff Nomenclature Item 39.07 if made of plastic [material indicated in sub-item (1) of item 15A] would be covered by Tariff Item No. 15A and not under the residuary Tariff item No. 68. We have carefully gone through the list of articles mentioned in Item No. 39.07 of Brussels Tariff Nomenclature and find that all those articles can be manufactured directly from the material mentioned in sub-item No. (1) of Tariff Item No. 15A and there is nothing in this trade notice which runs counter to the interpretation of Tariff Item No. 15A made by us. Even if the departmental authorities may be bound by the trade notice (on which question we express no opinion) the trade notice relied upon by the counsel for the petitioner do not help this case.

28. In the result, we are of opinion that the flash light torches made by the petitioner, main body of which is of plastic, cannot be said to be article made of plastic as contemplated by sub-item (2) of Tariff Item 15A and that they would fall within the ambit of Tariff Item 68. Accordingly the impugned decisions are upheld, though for different reasons. The petition fails and is dismissed. Parties are directed to bear their own costs.