(1985) 06 MAD CK 0002

In the Madras High Court

Case No : Write Appeal No. 244 of 1979

Madras Rubber Factory Ltd., Madras — APPELLANT

Vs

Superintendent of Central Excise, Madras and Others — RESPONDENT

Date of Decision : 18-06-1985

Acts Referred:
Central Excise Rules, 1944 — Rule 8(1)

Citation : (1986) 24 ELT 273

Hon'ble Judges : Venkataswami, J;M.N. Chandurkar, J

Bench : Division Bench

Advocate : G. Ramaswami, for the Appellant; T. Somasundaram, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

Chief Justice

1. The appellant-company are manufacturers of rubber products such as tread rubber, camel back, cushion gum, tread gum, cushion compound

which is also known as cushion repair compound and tread packing strips. We are in this appeal concerned with the liability of the appellant-

company to pay excise duty in respect of the cushion repair compound.

2. In the year 1969 the appellant took the stand that cushion repair compound manufactured by them was not excisable and that they were paying

duty under protest. The case of the appellant that cushion repair compound was not liable to excise duty was rejected by the Assistant Collector.

An appeal against this order was rejected as time-barred by the Collector on 20th September 1971. A revision petition filed against the order of

the Appellate Collector was rejected by the Government of India on 5th October 1972.

3. The appellant once again submitted a classification list on 16th May 1972,

describing the product manufactured by it as cushion repair

compound and paid duty under protest. A fresh classification list was again filed on 1st December 1972. The contention of the appellant was that

cushion repair compound which is admittedly not used for retreading or resoling of tyres as mentioned in Notification No. 71/68-C.E., dated 1st

April 1968 was exempted from excise duty. It will be useful at this stage to refer to the Notification dated 1st April 1968 which reads as follows -

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, and in supersession of the Notification of the

Government of India in the Ministry of Finance (Dept. of Revenue) No. 31/64-Central Excise, dated 1st March 1964, the Central Government

hereby exempts all rubber products, in the form of plates, sheets and strips unhardened whether vulcanised or not., and whether combined with

any textile material or otherwise (other than the products which are made either wholly or partly of rubber and which are used for the resoling or

retreading of tyres, including the products commonly known as tread rubber, camel back, cushion compound, cushion gum, tread gum and tread

packing strips) falling under sub-item (2) of Item No. 16-A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) from

whole of the duty of excise leviable thereon.

4. The Assistant Collector who gave a personal hearing to the appellant took the view that cushion repair compound was an excisable item falling

under Item 16A(2) and that it was not eligible for the exemption contained in Notification No. 71/68 read with Notification No. 27/73. An appeal

against this order came to be rejected by the Appellate Collector of Central Excise on 22nd January 1974. It appears from the appellate order that

the Appellate Collector relied on the earlier order of the Assistant Collector, dated 20th June 1969 which stood confirmed finally by the rejection

of the appellant''s revision petition by the Union of India. When the appellant-company approached the Government of India in its revisional

jurisdiction against the order of the Appellate Collector, the Government of India took the view that on the express terms of the Notification dated

1st April 1968, the product ''cushion compound'' was assessable to duty. These adverse orders were challenged by the appellant in a writ petition

filed in this court. It appears that before the learned Judge, a notification dated

1st March 1973 which amended the notification No. 71/68 dated

1st April 1968 was produced. The amendment made by this notification dated 1st March 1973 was that in the notification dated 1st April 1968,

for the words ''used for the resoling or retreading of tyres'' the words ''used for resoling, retreading or repair of tyres'' shall be substituted. Another

notification which was produced before the learned Judge was the Notification dated 14th October 1972, which reads as follows -

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts cushion

compound falling under sub-item (2) of Item 16A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) and used within the

factory of manufacture for further production of rubber products falling under the said sub-items and which are used for resoling or retreading of

tyres including the products commonly known as tread rubber, camel back, cushion gum, tread gum and tread packing strips, from the whole of

duty of excise leviable thereon.

This Notification referred to exemption of cushion compound falling under sub-item (2) of Item 16-A of the First Schedule to the Excises and Salt

Act (1 of 1944) (hereinafter referred to as the Act) and used within the factory of manufacture for further production of rubber products falling

under the said sub-item and which are used for resoling or retreading of tyres including the products commonly known as tread rubber, camel

back, cushion gum, tread gum and tread packing strips, from the whole of duty of excise leviable thereon. In respect of cushion compound

covered by this notification there was a complete exemption from excise duty. The learned Judge elaborately reproduced the pleadings and the

arguments advanced before him and came to the conclusion that the exemption claimed by the appellant could not be granted. He, however, made

an order that if the cushion compound had been used within the factory itself, then it was entitled to exemption from payment of excise duty.

Obviously, the learned Judge had in mind the exemption granted by the Notification dated 14th October 1972. It, however, appears to us that the

appellant had made no claim based on the Notification dated 14th October 1972. However, since the department has not challenged this part of

the order by an independent appeal, the correctness of this part of the order cannot be gone into in this appeal.

5. Before we refer to the arguments of Mr. G. Ramaswami, who appeared on behalf of the appellant, it is necessary to refer to the relevant entries

relating to the levy of excise duty. Entry 16-A of the First Schedule of the Act reads as follows -

RUBBER PRODUCTS : THE FOLLOWING : NAMELY :-

1. Latex foam sponge Fifty-five per cent ad valorem

2. Plates, sheets and strips Thirty-five per cent ad valorem

unhardened, whether vulcanised

or not, and whether combined

with any textile or material

or otherwise

3. Piping and tubing of unhardened Twenty-five per cent ad valorem

and vulcanised rubber

4. Transmission, conveyor or Twenty-five per cent ad valorem

elevator belts or belting, of

vulcanised rubber

The product in question is admittedly covered by Item (2) in Entry 16-A. It was, therefore, liable to ad valorem duty to the extent of 35 per cent.

5. The Government of India, however, issued a notification in exercise of its power to authorise exemption from duty in certain cases. The first of

such notification in respect of certain kinds of rubber products was issued on 1st March 1964. As a result of this notification, the rubber products

specified in column 2 of the table were given partial exemption from the payment of so much of the excise duty leviable thereon as is in excess of

the amount specified in the corresponding entry in column (3) of the said table. Item 2 in the second column of this notification read as ''Products

commonly known as tread rubber or camel back including cushion compound, cushion gum, tread gum and tread packing strips''. In the third

column, the amount was stated to be Rs. 1-10 p. per kilogram. The effect of this notification was that the above-mentioned items were exempt

from duty in excess of Rs. 1-10 p. Then came a second notification which was issued some time after, namely, 26th May 1067. By this

Notification the original notification dated 1st March 1964 which was earlier amended by the earlier notifications dated 5th November 1966 and

26th May 1967 was again amended by stating that rubber products falling under sub-items (1) and (2) of this item and specified in column (2) of

the table below are exempt from the payment of so much of the excise duty leviable thereon as is in excess of the amount specified in the

Corresponding Entry in column (3) of the said Table :

TABLE

Sl. No. Description Amount

Rs. p. kg

1. Latex Foam sponge 2 15

2. All products made either wholly or 1 10

partly of rubber and which are used

for the resoling or retreading of

tyres, including the products commonly

known as tread rubber, camel back,

cushion compound, cushion gum, tread

gum, tread packing strips

3. All other products Nil

The other relevant notification is dated 1st April 1968, which we have already reproduced earlier.

6. The contention of the learned counsel for the appellant-company before us is that admittedly cushion compound is not used in the process of

resoling or retreading of tyres and is used only for the purpose of repairs of the carcass of the tyres. Therefore, according to the learned counsel,

cushion compound must be be treated as falling under Item 3 of the second notification which refers to ''all other products'' and that since the

products specified in the latter part of the second item in the said notification were not used for the purpose of resoling or retreading of tyres, they had to be ignored and must necessarily, therefore, be treated as falling in the residuary Item 3. The learned counsel has heavily relied on a

clarification issued by the Government of India dated 7th February 1966 by way of a circular issued by the Ministry of Finance in which while

dealing with the doubts as to whether certain rubber products which where not Latex Form sponge were liable to excise duty or not it was stated

that different brand names are given by different manufactures to the same or similar products giving rise to the question whether or not a particular

product can be deemed to be commonly known as ''tread rubber'', ''camel back'', ''cushion compound'', ''cushion gum'' etc, so as to attract duty.

In that Circular, the Ministry of Finance stated that the intention was to subject only ''Latex foam sponge'' and the rubber products popularly

known as ''tread rubber'' or ''camel back'' used for the resoling or retreading of tyres to duty and that being the intention, a rubber product which is

neither ''Latex form sponge'' nor used for the resoling or retreading of tyres was classifiable as ''all other products'' and, therefore, exempt from

whole of the duty leviable thereon under Item 3 of the table to the Notification dated 1st March 1964. In paragraph 5 of the circular, it is stated as

follows -

Rubber products used for repair of tubes and tyres also in view of what has been stated above, do not attract duty.

7. Mr. G. Ramaswami has contended that since tread rubber which is used for repair of tubes and tyres is expressly stated in the circular as not

attracting duty any other product which is similarly utilised for repairs of tyres and tubes must also be exempted from duty and this necessarily will,

therefore, include tread gum. Reliance is also placed on a very brief and terse order made by the Government of India in a revision petition filed by

the appellant-company themselves in which the case of the appellant-company was that collection of duty on tread gum should be cancelled with

immediate effect. The revision application produced on record is at page 19 of the compilation of pleadings and in the revision application the

appellant-company has relied on the circular referred to above. In this revision application, the Government of India passed a four line order which

reads as follows -

Having regard to all the facts and circumstances of the case, the Government of

India are pleased to allow the revision application and direct that

consequential relief be granted to the petitioner.

8. In addition to this, the learned counsel for the appellant also relied on the insertion of the words ''or repair'' in the notification dated 1st April

1968 and the contention is that since it was only with effect from the 1st of March 1973 that the notification dated 1st April 1968 came to be

amended so as to include the words ''repairs of tyres'', it must be understood that products like tread gum which were used for repairs prior to this

date were not subject to excise duty.

9. Mr. Somasundaram appearing on behalf of the Department, has pointed out to us that the notification in question which is dated 1st April 1968

must be construed on its own terms and that the power of the authorities to construe the notification in the exercise of their quasi-judicial function

cannot be fettered by the view expressed by the Ministry of Finance in its circular or by any other direction. The learned counsel has argued that if

the notification dated 1st April 1968 is properly read, the portion of brackets in that notification excludes the products in respect of which

exemption was never intended to be granted. In other words, the contention is that before exemption is claimed under the notification dated 1st

April 1968, the appellant is bound to show that the product in respect of which exemption is claimed falls squarely within the four corners of the

notification. If we read the plain words of the notification dated 1st April 1968, it does not, in our view, pose any difficulty at all in so far as the

construction of the notification is concerned. The material part of the notification states that the Central Government hereby exempts all rubber

products, in the form of plates, sheets and strips unhardened whether vulcanised or not, and whether combined with any textile material or

otherwise falling under sub-item (2) of Item 16-A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) from whole of the

duty of excise leviable thereon. While specifying the nature of the products, the notification has taken care to also specifically notify as to which are

the products which will stand excluded from the exemption. These products are enumerated by way of exception in the bracketed portion of the

notification. Having regard to the bracketed portion all rubber products, in the form of plates, sheets and strips unhardened whether vulcanised or not, and whether combined with any textile material or otherwise, (other than the products which are made either wholly or partly of rubber and

which are used for the resoling or retreading of tyres, including the products commonly known as tread rubber, camel back, cushion compound,

cushion gum, tread gum and tread packing strips) will alone be entitled to exemption. The effect of the bracketed portion, therefore, is that all

products which are mentioned within the bracket and which are used for the resoling or retreading of tyres will not get the exemption so far as the

first part of the bracket is concerned. The bracketed portion consists of two parts. The first part specifically refers to products which are made

either wholly or partly of rubber and which are used for the resoling or retreading of tyres. The second part is an inclusive part and the inclusive

part specifies certain kinds of products such as tread rubber, camel back, cushion compound, cushion gum, tread gum and tread packing strips.

While constructing the Notification issued in exercise of the statutory power, the notification must be so read as to give effect to all parts of the

Notification. Instead of specifying in two separate portions of the notification, namely, products which are given exemption and products which are

not given exemption, the authority which has issued the notification has indicated the products which are not entitled to exemption by putting in a

clause of exclusion by using the phraseology ''other than''. While enumerating the products which are not entitled to exemption, the notification has

referred to certain products which were not used for resoling or retreading of tyres and since those products were not to be given exemption they

were included in the inclusive part of the bracketed portion. When the latter part of the bracketed portion used the words ''including the products'',

these words had clearly a reference to products other than those which fall in the first part. The products which fall in the first part of the bracketed

portion have to satisfy two conditions, namely, (1) they must be made either wholly or partly of rubber and (2) that they must be used for resoling

or retreading of tyres. The latter condition is not required to be satisfied by these products which fall in the inclusive part of the bracket. The very

fact of including certain rubber products in the inclusive part of the bracketed portion would show that since those products were not used for

resoling or retreading of tyres they would not have fallen in the first part. The intention of the authority who issued the Notification is, in our view, very clear, that rubber products which are not used for resoling or retreading of tyres, such as tread rubber, camel back, cushion compound,

cushion gum, tread gum and tread packing strips were also not to be given any exemption. On the plain words to this notification, therefore, we are

unable to accept the contention of the learned counsel for the appellant that cushion compound was not liable to excise duty at all.

10. Undoubtedly, the circular relied upon by the appellant does refer to tread gum being exempted. But it has to be noted, as pointed out by the

learned counsel for the department, that the notification which we are now called upon to construe is not at all identical to the notification in respect

of which the circular was issued. The circular issued in respect of a notification in which there was a wholesale exemption from duty in excess of

Rs. 1-10p. in respect of the products which were enumerated in item (2) of the second column of the table. Whether that clarification was correct

or not is not a matter which we are required to go into in this appeal. The fact that the Ministry of Finance issued a circular with regard to an entry

in a notification which was differently worded cannot affect the construction which we have placed on the notification in question dated 1st April

1968 on the plain words of the notification. Similarly, the fact that tread gum has been granted an exemption by the Government by an order made

in the exercise of revisional jurisdiction is also not relevant for the purpose of the true effect of the notification dated 1st April 1968. As already

pointed out, in the matter of construction of a statutory notification, the primary guide must be the language used in the Notification and the

circumstances that that notification has been amended at a subsequent period of time cannot control the plain meaning of the words of the

notification.

11. It is true that it was argued before us by the learned counsel for the department that a similar case of the appellant has been rejected on an

earlier occasion when the revision application of the appellant was rejected by the Government of India on 5th October 1972. The principles of res

judicata do not apply in matters relating to taxation and in any case when the matter has come to this Court for the first time, the appellant cannot

be prevented from canvassing what according to the appellant should be the correct construction of the Notification dated 1st April 1968. The learned Judge has remanded the matter to the authorities in order to ascertain whether there was any captive consumption of cushion compound.

As we have already pointed out, such does not appear to be the case of the appellant, but since some indulgence has been shown to the appellant,

we are not entitled to interfere with the direction in the absence of an appeal by the Department. In our view, there is thus no substance in the

appeal.

12. The appeal fails and is dismissed with costs. Counsel''s fee Rs. 500.

