

(1997) 11 MAD CK 0136

In the Madras High Court

Case No : Writ Appeal No's. 726 to 730 of 1994

Madura Coats Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-11-1997

Acts Referred:

Central Excise Rules, 1944 — Rule 173B, 173B(4)
Central Excises and Salt Act, 1944 — Section 35

Citation : (1998) 97 ELT 420

Hon'ble Judges : Kanakaraj, J;K.M. Natarajan, J

Bench : Division Bench

Advocate : Shri N.S. Sivam, for the Appellant; Shri K. Jayachandran, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

J. Kanagaraj, J.—These Writ Appeals filed by the same textile company against the common order of the learned single judge dated 11-1-1993, arise under the following circumstances. The appellant-company is a composite Textile Mill having both spinning and weaving activities at Madurai. One of the items manufactured by them is Cotton Yarn. Some reputed tyre manufacturers placed demands on the appellant-company to make Tyre Cord Warp Sheet for the use of the manufacture of tyres. The appellant-company supplies such customers the required goods in parallel loosely held together by cotton yarn. This arrangement of Rayon or Nylon yarns intercepted by cotton yarn to hold them together, is called "Tyre Cord Warp Sheet". The question involved in these writ appeals is whether such warp sheet can be classified as Fabric or should be classified only as yarn. If it is Fabric, it will come under Tariff Item 22 and if it is yarn, it will come under Tariff Item 18. So far as the appellants are concerned, the said goods supplied by the appellant-company to their customers, had been classified in the books of the respondents under Tariff Items 19 or 22. Based on certain decision of the Calcutta High Court relating to the very same company but in respect of a factory at Calcutta, the appellant sought to get approval for classification of the items under Tariff Item 18 as Yarn. Correspondence was

exchanged between the parties and ultimately, the Superintendent of Central Excise, Madurai City Range, Madurai, passed an order on 25-8-1983 in O.C. No. 1070/83 in the following terms.

"In case you start clearing tyre cord warp sheets as yarn from 1-9-1983 as envisaged in para 2 of your letter dated 1-8-1983, without getting the classification lists approved by the competent authority reclassifying tyre cord warp sheet as Yarn, appropriate action under the Central Excise Law will have to be initiated and enforced".

2. The above attitude of the respondents gave rise to the appellant filing five writ petitions as follows :

W.P. No. 4590/84 was for the issue of Writ of Mandamus, directing the respondents to return the excise duty said to have been illegally collected from them under Tariff Item 22. W.P. No. 4591/84 is to quash the order of the Superintendent of Central Excise dated 25-8-1983 and to direct the respondents to accord approval to the classification as sought for by them. W.P. No. 4619/84 is to quash the proceedings of the Assistant Collector of Central Excise dated 26-3-1984 holding that the Dipped man-made fabric shall be classified under Tariff Item 22(3) instead of under Tariff Item 22(1)(b) and staying further action in view of the pendency of certain writ proceedings. The appellant has sought for further direction in the said writ petition to finalise the classification under Tariff Item 22(1)(b). In W.P. No. 9016/84, the appellant-company sought for direction to the respondents to refund the excise duty collected in respect of Dipped fabric and warp sheet under Tariff Item 22(1)(b). In W.P. No. 9017/84, the appellant sought for a declaration to declare the proper classification for Dipped fabric and warp sheet under Tariff Item 22(1)(a).

3. The entire arguments of the appellant-company rested on the decision of the Calcutta High Court in Collector of Central Excise and Others Vs. Madura Coats Ltd., (Division Bench). No doubt, in that case, the Division Bench of the Calcutta High Court held that the nylon or rayon warp sheets are not goods within the meaning of Entry 68 and that they continue to be yarn under Tariff Item 18. In other words, the Division Bench of the Calcutta High Court came to the conclusion that the entire exercise with nylon yarns do not undergo any change and that no new substance came into existence after the warp sheets were prepared. The SLP preferred by the respondents against the said judgment, has also been dismissed. What is more, the Bombay High Court in Century Spinning and Manufacturing Co. Ltd. Vs. Union of India, , has totally adopted the said classification in respect of the very manufacture of warp sheets by a different company. On the other hand, the Department placed reliance on Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others, , the following passage in the judgment of the Supreme Court is very apposite.

"On a comprehensive consideration of the material before us, there is no escape from the conclusion that by and large a tyre cord fabric is regarded as a textile

fabric. The peculiar feature that the tyre cord constitutes the dominating element in indicating the use to which the fabric is put and the close concentration in which it is packed in contrast to the light density with which the weft thread is woven does not detract from the conclusion that what we have is a textile fabric. We are concerned with the product manufactured and sold by the appellant. It is wholly immaterial that once tyre cord fabric has, in the hands of the tyre manufacturer, undergone the process of rubberizing and is embedded in the tyre body the significance of the weft thread is greatly reduced. It may also be that in the more modern process of manufacturing tyres what is used is cabled rayon with hawser twists with the cords assembled in parallel order and rubberised without the intermediate process of weaving on a loom. The material on the record, however, indicates that the product manufactured by the appellant does not fall in that category. It is a woven fabric in which the intermediate process of weaving the weft thread across the warp cord is an integral stage of manufacture. When the purchaser buys the product, it is the entire integrated woven fabric which he buys, it is not merely the tyre cord by itself. If tyre cord was all that he desired, he would purchase that commodity, which is readily available, and not tyre cord fabric. We may also point out that Item 22 of the 1st Schedule to the Central Excises and Salt Act speaks of "all varieties of fabrics", language wide enough to include the rayon tyre cord fabric manufactured by the appellant".

4. The learned single Judge has taken the view that in view of the categorical judgment of the Supreme Court in the last mentioned case, the judgment of the Calcutta High Court as confirmed by the Supreme Court, may not have a binding force and that he was obliged to follow the judgment of the Supreme Court in *Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others*, . Before the learned single Judge, the Bombay High Court judgment, was no doubt, not cited.

5. Mr. N. S. Sivam, learned Counsel for the appellant argued before us that the Bombay High Court has taken the view that the judgment of the Division Bench of the Calcutta High Court having been affirmed by the Supreme Court in the sense that the SLP (SLP) was dismissed, should be taken note of. Mr. Sivam brings to our notice the decision in *Sree Narayana Dharmasanghom Trust Vs. Swami Prakasananda and Others*, where it is laid down that even though the dismissal of a SLP may not amount to laying down the law, it did amount to finality between the parties before Court. In this sense, he argues that the very same company having obtained a decision before the Calcutta High Court and the same having been affirmed by the Supreme Court, operates as a *res judicata* in the present case. We are of the opinion that even though the very same company is involved both in the appeals before us and in the judgment of the Calcutta High Court, the manner and method of manufacture has to be proved by the evidence because the factory at Madurai is certainly not the factory which was involved in the Calcutta High Court judgment. We are also of the opinion that on the facts of each case, the authority has a right to classify or re-classify

the product under the relevant tariff item. In this connection, reference may be made to Rule 173B of the Central Excise Rules, 1944. The said rule provides for the assessee filing a list for approval by the authority. Sub-rule (4) of the said Rule enables the proper officer to make alteration in the classification if circumstances warrant. Against any order of the proper officer classifying or re-classifying certain goods as coming under a particular tariff, an appeal is provided to the Commissioner of Central Excise (Appeals) u/s 35 of the Central Excise Act.

6. If we now turn to the facts of the case, the appellant-company did ask for classification on 14-6-1983. Their request was as follows :

"As such we would like to advise you that the correct classification for Tyre Cord Warp Sheet is only Tariff 18 for Rayon/Nylon (Man Made Filament) Tyre Cord Warp Sheets and Tariff 18A for Cotton Tyre Cord Warp Sheets and accordingly we are filing herewith our Yarn Classification lists under Tariff 18 for Rayon, Nylon, Polyester Tyre Cord Warp Sheets and Tariff 18A for Cotton Tyre Cord Warp sheets and a copy of approved list may please be sent to us for our further action".

The 3rd respondent, after seeking clarifications and seeking copies of the judgment of the Calcutta High Court, passed the impugned order on 25-8-1983 which we have already quoted. The order dated 25-8-1983 does not amount to an exercise of power under sub-rule (4) of Rule 173B. In our opinion, the authority is required to pass a considered order as to why he is classifying or re-classifying certain goods as falling under a particular tariff item. The proper officer has to consider the arguments for and against and pass a considered order. This order of the first authority will depend upon the facts of the case, namely, the manner and method of the production of warp sheets. Against such an order, as we already stated, an appeal lies. We are again of the opinion that the proper channel by which the appellant can redress his grievance, is to seek a considered order from the proper officer and then proceed to file an appeal if they are aggrieved. To approach the High Court straightaway under Article 226 of the Constitution, is not, in our opinion, a proper procedure. Therefore, without deciding the question whether the warp sheets in the present case fall under Tariff Item 18 or Tariff Item 22, we direct the proper officer under Rule 173B(4) to pass a considered order on the application of the appellant-company seeking classification under a particular tariff item. Such an order should give reasons as to why a particular tariff item is adopted by the proper officer.

7. In this view of the matter, we set aside the findings of the learned single Judge and leave the entire question open for consideration by the proper officer to go into the question under Rule 173B(4). It is in the interests of the Department that the order is passed at an early date so that the future collection of excise duty will not be affected. The Writ Appeals are disposed of in the above manner. There is no order as to costs.