(1979) 02 BOM CK 0005

In the Bombay High Court

Case No : Miscellaneous Petition No. 1005 of 1974

Mechanical Packing Industries Pvt. Limited APPELLANT

Vs

C.L. Nangia and Others RESPONDENT

Date of Decision : 07-02-1979

Acts Referred:

Citation : (1983) 3 ECR 627 : (1981) 8 ELT 144

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Advocate : Taraporewalla and A.J. Rana, for the Appellant; R.L. Dalal and V.C. Kotwal, for the Respondent

Judgement

1. Can an article which is capable of being bent be called rigid ? This really is the only, rather simple question that comes to be decided in this petition.

2. The petitioners are manufacturers of what are called "PTFE" sheets. These are plastic sheets and are for the purposes of excise covered by Tariff item 15A(2) of the Schedule to the Central Excises and Salt Act, 1944. The relevant portion of the entry reads thus :-

On 29th May 1971 the Union of India issued an Exemption Notification in regard to items falling under item No. 15-A(2). The relevant portion thereof reads thus :-

"15A. (ii) Under Government of India, Ministry of Finance (Department of Revenue and Insurance) Notification No. 68/71-Central Excise, dated the 29th May 1971, the Central Government hereby exempts articles made of plastics, all sorts, falling under sub item (2) of Item No. 15A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) except -

(i) rigid plastic boards, sheeting, sheets, and films, whether laminated or not......."

The Petitioners were then asked to show cause why they should not be charged to excise under the provisions of Item No. 15-A(2) on the basis that the articles they manufactured were rigid plastic sheets which were excepted from exemption by the Exemption Notification. The Petitioners, in showing cause relied upon a test certificate obtained by them from the Government of India''s National Test House, Calcutta which stated that the Petitioners'' articles, when compared with the requirements laid down by the American Society for Testing Materials (ASTM), were classified as semi-rigid plastics. The petitioners also relied upon two affidavits. The deponents of both affidavits were technically qualified people and one held a commercial appointment with an international plastics company. The affidavits stated that the petitioners'' articles were not rigid sheets and that the ASTM method of testing was universally accepted. The authorities relied upon a test certificate obtained from the same Test House which classified the petitioners'' articles, as compared to the requirements laid down in a Trade Notice issued by the Bombay Central Excise Collectorate read with its corrigendum as "rigid plastic".

3. Reference may be made to that Trade Notice in view of the fact that the order of the 2nd Respondent is based upon it. The Trade Notice is dated 26th December 1970 and the relevant portion reads thus :-

"........... A question has been raised as to what is the demarcating line between ''rigid'' and ''flexible'' plastic boards, sheeting, sheets, films, etc., referred to in the notifications. The matter has been examined and it has been decided that plastic boards, sheeting, sheets, films which have an elasticity of not over 700 kilograms per square centimeter at 233 Centigrade and 50% relative humidity when tested in accordance with the method of test for stiffness of plastics as laid down in A.S.T.M. (D-47) should be treated as "non-rigid or flexible". All other plastic boards, sheetings, sheets and films which have an elasticity of over 700 kilograms per square centimeter at 23 Centigrade and 50% relative humidity should be treated as ''rigid''."

The 2nd Respondent after hearing Counsel on behalf of the Petitioners concluded that the excisability of the Petitioners'' articles was governed by the guidelines laid down in the Trade Notice and that, therefore, only the test certificate based upon the Trade Notice could determine the excisability of the Petitioners'' articles. He held that the Petitioners'' articles were rigid sheets liable to excise under item No. 15-A(2).

4. The Petitioners preferred an appeal against this finding and in appeal relied upon further affidavit of persons with technical knowledge and, for the most part, associated with commerce in plastics. The sum and substance of these affidavits, was that the Petitioners'' articles, namely PTFE sheets, were nowhere in the world regarded as rigid and that their special utility lay in the fact that they were chemically inert and tough without being rigid and, therefore, ordinarily suitable as packaging material. The appellate authority, the 1st Respondent, after hearing Counsel, gave his findings in these words :-

"....... The appellants admit that the goods are semi-rigid. According to the Tariff, the Rigid Plastics or Flexible plastics are only mentioned. So it is clear that the goods fall under Tariff Item 15A(2) with effective Notifications Nos. 71/71 and 27/72. The appeal petition is therefore rejected".

Against the orders of the 1st and 2nd Respondents the Petitioners have presented this petition.

8th February, 1979 :

5. The principal contentions raised in the petition and in the submissions made before me by Mr. Taraporewalla, learned counsel for the Petitioners, were that the excise authorities were not entitled to issue and rely upon the Trade Notice defining ''rigid and flexible'' is an artificial and arbitrary manner; that the classification of plastic sheets was universally recognised to be (a) rigid, (b) semi-rigid, and (c) flexible under the ASTM standard; and that the petitioners'' articles fall within the classification "semi-rigid", and were, therefore, entitled to exemption under the Exemption Notification.

6. It was fairly conceded by Mr. Dalal, learned Counsel for the Respondents, that as the law stands, the Trade Notice had no statutory force and could not be relied upon. The order of the 2nd Respondent, which is based upon the Trade Notice, therefore, falls.

7. Mr. Dalal fairly agreed that, as the law stands, the Exemption Notification must be construed liberally but without doing violence to the language thereof. He contended that the word "rigid" in the Exemption Notification should be construed in the same manner as the word "rigid" in Entry No. 15-A(2), that is, meaning "not flexible". For the purposes of this judgment, I shall assume that the ASTM classification should not be applied and that plastic sheets should only be classified as "rigid" or "flexible". In the absence of statutory definitions, the authorities were obliged to ascertain whether the petitioners'' articles were "rigid" or "flexible" according to the ordinary or dictionary meanings of these words. The Oxford Dictionary (Compact Edition) 1971 defines "rigid" to mean stiff, unyielding, not pliant or flexible, firm, hard. It defines "flexible" to mean capable of being bent, admitting of change in figure without breaking and yielding to pressure, pliable, pliant. Applying these definitions, as article which is not capable of being bent is rigid; an article which is capable of being bent is flexible. The concept of the word "flexible" does. A pencil is rigid because if it is sought to be bent it breaks. Paper is capable of being bent; it is flexible. A rubber eraser is capable of being bent slightly; it is flexible.

8. It is admitted position that the Petitioners'' articles are capable of being bent. That being so, they are flexible not rigid. The 1st Respondent must, therefore, be held to have been in error when he held that, because the petitioners admitted that their articles were "semi-rigid", the articles had to be classified as "rigid" and falling outside the purview of the Exemption Notification.

9. Mr. Dalal complained that the petitioners had never based their case upon the

ground on which it is now decided. He is right. Therefore, while I make the petition absolute in terms of prayers (a) and (b), I order that each party shall bear and pay its own costs of the Petition.

10. The bank guarantee given by the petitioners pursuant to the order dated 11th December, 1974 to stand discharged after a period of four weeks from today.

