(1983) 09 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 622 of 1981

Phoenix Mills Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 14-09-1983

Acts Referred:

Citation : (1985) 4 ECC 286 : (1983) 14 ELT 2113

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

Pendse, J.—The issue involved in this petition stands concluded by the decision of Mr. Justice Shah in Miscellaneous Petition No. 1828 of 1979 decided on January 23, 1980. I have followed the decision of Mr. Justice Shah in Writ Petition No. 1192 of 1980, decided on April 22, 1981. Only few facts are required to be stated to appreciate the grievance of the petitioners.

2. The petitioners purchase raw cotton and process it into Absorbent Cotton Wool, carded or un-carded. The process of manufacture is for removal of waxes to make cotton wool absorbent. The absorbent cotton wool by medical standards is stamped ''B.P.'' or ''I.P.''. The absorbent cotton wool without these stamps is known in the trade market as ''absorbent cotton wool, carded or un-carded''. In the year 1968, the respondents declared a cash subsidy scheme, under which the exporter is entitled to the cash compensatory support at 15% FOB value on certain items. Item ''BBI'' of the scheme reads ''absorbent cotton wool''. The scheme was brought to an end on July 30, 1977, but the contracts registered prior to that date were not affected, by the scheme coming to an end. During the subsistance of the scheme, on January 10, 1974, local Classification Committee at Bombay recorded a finding that absorbent cotton wool included un-carded also and this decision was confirmed by Head Quarters Classification Committee at Delhi on December 2, 1974.

3. In pursuance of the scheme, the petitioners during the year 1977 exported absorbent cotton wool, carded and un-carded, of different F.O.B. value. The

petitioners filed the requisite application before the Joint Chief Controller of Imports and Exports, claiming the benefit under the scheme. The Joint Chief Controller of Imports and Exports rejected the applications by separate orders in respect of different claims for different durations and those orders were confirmed in appeal. The petitioners preferred second appeal before the Government of India, and the Chief Controller of Imports and Exports by letter dated March 23, 1981 informed the petitioners that the products exported by the petitioners were not carded and therefore not an absorbent cotton wool in accordance with Indian Pharmacopoeia. The letter further recites that in some cases though the product was carded and confirmed the pharmacopoeia standards, it was sent in bales, and if sent in bales the product will have to be repacked in smaller containers after sterilization and therefore the product did not conform to the Indian Pharmacopoeia standards. These orders passed by the Chief Controller of Imports and Exports are under challenge in this petition.

4. Shri Hidayatullah, learned counsel appearing in support of the petition, apart from relying upon the two decisions of this Court cited hereinabove, advanced the following propositions :

(i) The Judgment in Ajay Cotton was binding but has been disregarded in the impugned orders.

(ii) There is no difference in Absorbent Cotton Wool ("ACW") and ACW (un-carded) in trade understanding which alone is the relevant criteria for classification for the purposes of the scheme.

(iii) The Import Control Authority cannot limit the plain language of entry BBI by adding the words "BP/IP" or the words ''carded'' after the words ''Absorbent Cotton Wool''.

(iv) The determination made by the classification Committees was a relevant factor and has been ignored, particularly as it related to the very issue of classification under the scheme.

(v) Reliance on the packing in bales is an irrelevant consideration as the goods are ACW as known to trade.

(vi) The goods were not un-carded in all cases. Therefore the benefit of the scheme had to be given to those consignments but despite evidence in support, this aspect has been disregarded.

5. The learned counsel submitted that the order under challenge cannot be sustained and the petitioners are entitled to the relief. I find considerable merit in the submissions of the learned counsel. Shri Parikh, learned counsel appearing on behalf of the Department, relied upon the return dated June 25, 1982 filed by Shri G. R. Nair, Deputy Chief Controller of Imports and Exports, Bombay, and submitted that the absorbent cotton un-carded is not the same as absorbent cotton wool and is actually an interconnected product before the manufacture of absorbent cotton wool. I inquired from the learned counsel as to what process is

required to be undergone before an absorbent cotton un-carded becomes absorbent cotton wool, and the learned counsel was unable to given any positive answer. It is undoubtedly true that the scheme for cash subsidy pertains to export of absorbent cotton wool, but it is difficult to imagine as to how and on what basis the Department is declining to give benefit for the export of absorbent cotton wool uncarded. Shri Hidayatullah submitted that the only difference between the absorbent cotton wool carded or un-carded is degree of absorption and both continues to be absorbent cotton wool for all purposes.

6. Shri Parikh then relies upon the contents of paragraph 11 of the return and claims that both under the British Pharmacopoeia Code, 1973 and the Pharmacopoeia of India, 1966, absorbent cotton wool is described as having well carded cotton fibre amongst other characteristics. The learned counsel urged that as the goods exported by the petitioners were un-carded cotton, it cannot be treated as an absorbent cotton wool and the benefit was rightly denied. It is not possible to accept this submission. The learned counsel was unable to point out the British Pharmacopoeia or the Pharmacopoeia of India on the ground that the officer is not present in Court.

7. Shri Parikh finally submitted that the decision of Mr. Justice Shah in Miscellaneous Petition No. 1828 of 1979 is pending in Appeal, and therefore, the decision should not be followed. The submission is without any merit. The decision of the learned Single Judge is binding on me as long as it is not disturbed by the Appellate Court. In my judgment, the petitioners are entitled to the relief sought in the petition.

8. Accordingly, the petition succeeds and the rule is made absolute by quashing the orders at Exhibits ''G'', ''L'' and ''Q'' all dated March 23, 1981. The respondents are directed to pay to the petitioners the amount of cash compensatory support as per their applications, copies of which are annexed as Exhibits ''A'', ''H'' and ''M'' to the petition.

Shri Hidayatullah applies for payment of the cash compensatory support along with interest at the rate of 18% per annum on the ground that the advantage was denied to them without any reason. I am not inclined to grant interest to the petitioners on the facts and circumstances of the present case. The petitioners would be entitled to the costs of the petition.

Pursuant to the order dated April 8, 1983 passed by the learned Single Judge on Notice of Motion No. 479 of 1983, the respondents have deposited the amount of Rs. 16,28,836.68 in this Court, and the petitioners had with drawn the same on furnishing bank guarantee in favour of the Prothonotary and Senior Master of this Court. The Bank Guarantee furnished by the petitioners shall be kept alive till the expiry of the period for filing appeal against this judgment.

