(2003) 11 SC CK 0020

In the Supreme Court Of India

Case No : Civil Appeal No. 6291 Of 1997

Premier Tyres Ltd. APPELLANT

Vs

Collector of Central Excise RESPONDENT

Date of Decision : 12-11-2003

Acts Referred:

Citation : (2004) 91 ECC 259 : (2003) ECR 642 : (2003) 158 ELT 426 : (2003) 12 SCC 366

Hon'ble Judges : S. Rajendra Babu, J;G. P. Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appellant before us is engaged in a manufacture of tyres and in the course of their business they purchased tyre cord warp sheets which are dipped in Resorcinol Formal Dehyde Latex Solution and then dried. The question is whether this item will fall within Tariff Item 22(1)(b) or whether it falls under Entry 16A(2).

Entry 22 reads as follows :

" "Man-made fabrics" means all varieties of fabrics manufactured either wholly or partly from man-made fibres or yarn and includes embroidery in the piece, in strips or in motifs and fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials, and fabrics covered partially or fully with textile flocks or with preparations containing textile flocks, in each of which man-made (i) cellu-losic fibre or yarn, or (ii) non-cellulosic fibre or yarn, predominates in weight"

Entry 16A(2) reads as follows :

"Plates, sheets and strips unhardened, whether vulcanised or not, and whether combined with any textile material or otherwise."

2. The assessing authority found that all the classified goods are classifiable

under Tariff Item 22(1)(b) of the Central Excise Tariff. On appeal to the Collector of Central Excise, he held that tyre cord warp sheets which are dipped in Resorcinol Solution are classifiable under Tariff Item 16A(2) of the erstwhile Central Excise tariff as rubber product and not under Item 22(l)(b) of the Central Excise tariff as it existed prior to 28-2-1986.

3. The Tribunal after adverting to the decision of this Court in Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others, and the decision in Collector of Central Excise, Hyderabad Vs. Fenoplast (P) Ltd. (II), took the view that the predominance of the percentage of the materials has to be ascertained; that the fabric predominates and Collector has not clearly stated that after dipping in resorcinol solution the rubber cord warp sheet is more or less in comparison to the other materials, and took the view that in Fenoplast (P) Ltd. (supra) this Court held that predominance is only in relation to the base fabrics which are impregnated coated or laminated coated or laminated as the case may be and on that basis allowed the appeal filed by the revenue. Hence, this appeal.

4. It is contended before us that interpretation placed by the Tribunal on the decision in Fenoplast (P) Ltd. is not correctly applied. It is also brought to our notice that the expression "man-made fabric" has been elaborated in Tariff Item 22 itself. It covers only situations such as fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials and fabrics covered partially or fully with textile flocks or with preparations containing textile flocks such as flock printed fabrics and flock coated fabrics. It cannot be disputed that the goods in question are not of that nature which can be termed as a preparation of cellulose derivatives or other artificial plastic material or fabrics covered partially or fully with textile flocks.

5. Hence, Tariff Item 22 may not be attracted at all. Therefore, the Tribunal could not have entirely relied upon only Tariff Item 22 and adverted to a proviso made in that provision and interpreted the whole matter. The decision in Fenoplast (P) Ltd. should not have been understood in that light. In that view of the matter, we set aside the order made by the Tribunal and remit the matter for fresh consideration in accordance with law. The appeal is allowed accordingly.

