(1982) 05 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Writ Petition No''s. 1492, 1502, 1503, 1504, 1516, 1517, 1533, 1535, 1541, 1542, 1543, 1577, 1578, 1579 and 1588 of 1980

Raish Plastics and Others — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 06-05-1982

Acts Referred:

Citation : (1983) 12 ELT 92 : (1982) RLW 437 : (1982) WLN 189

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Advocate : Lekh Raj Mehta and Rajendra Mehta, for the Appellant; J.P. Joshi, for the Respondent

Final Decision : Allowed

Judgement

M.C. Jain, J.—These writ petitions raise a common question regarding leviability of excise duty on the manufacture of acrylic plastic sheets, tubes and plastic bangles out of Methyl Mathacrylate Monomer (hereinafter referred to as "the Monomer") both, regenerated and virgin, so it would be convenient and proper to dispose them of by this common order.

2. The facts, as stated in the case of the petitioner Raish Plastics (S.B. Civil Writ Petition No. 1543 of 1980) are that the petitioner manufactures acrylic plastic sheets, whether flat or round, and plastic bangles, through cylinderical process. In the manufacture thereof the petitioner uses regenerated Monomer manufactured in its own factory out of plastic scraps and it also purchases regenerated Monomer from the market. The Monomer virgin is purchased by the petitioner from Polymer Corporation of Gujarat Ltd., Baroda. The other petitioners purchase monomer virgin from other firms of different places. The petitioners'' case is that they have been enjoying exemption from Central excise duty and were not required to obtain any licence. The manufacturers of the plastic bangles were enjoying this exemption right from September 1973, when the original notification No. 38/73 C.E. dated 1-3-1973 was amended by

notification No. 174/73 C.E , dated 8-9-1973, whereby exemption was granted to acrylic sheets, if produced out of Monomer. The petitioners claim their products wholly exempt from payment of Central excise duty. The Superintendent, Central Excise, Range, Jodhpur, asked not to sell their products manufactured out of Monomer virgin till orders of the Central Excise Department. Such a direction was given to the manufactures of A.P. Bangles of Jodhpur. Thereupon they represented the matter through their Association, viz., The Plastic Industries Association. The office bearers of the Association met the Assistant Collecter, Central Excise, Range, Jodhpur on 9th July, 1980, and explained to him the entire process of manufacture. He also visited the factory of M/s. Ambica Plastic, Pratap Nagar, Jodhpur, and the manufacturing process was shown to him. However, the Superintendant, Central Excise, Range, Jodhpur, sent the following letter dated 15-7-1980 (Annexure 1) to the President, Plastic Bangles Association, Jodhpur :-

"CENTRAL EXCISE RANGE JODHPUR

No. G/-6/21/78/9233 dated 15-7-1980

To

The President,

Plastic Bangles Association,

Choorigar Bazar,

Jodhpur,

D/Sir,

Sub:-Central Excise, Excisability of A.P. tubes-regarding.

The A.P. tubes/bangles manufactured out of M.M. Monomer virgin isexcisable. The regenerated monomer brought from outside is also treated at par with virgin M.M. Monomer. You are, therefore, requested to advise all the Association''s members, manufacturing the said goods, should obtain Central Excise licence IMMEDIATELY. Please also note that manufacture and clearance of the said goods should be carried on under Central Excise Rules, 1944.

Yours faithfully

Sd. KartarChand

(KARTAR CHAND)

15-7-80"

The petitioners were required to obtain Central Excise licence and they were also informed that A.P. tubes/bangles manufactured out of Monomer virgin are excisable and the same is the position of the regenerated Monomer brought from outside. In these writ petitions, the petitioners have challenged the levy of excise duty on A.P. sheets, tubes and bangles manufactured by them out of Manomer virgin as well as regenerated, whether manufactured by them or purchased by them from outside. The petitioners have sought quashing of the impugned letter Annexure 1 and have further sought injunction against the respondent, from enforcing the same.

3. A reply to the writ petitions has been filed. The respondents'' case is that the petitioners are not engaged in the manufacture of A.P. bangles only, but they first manufacture A.P. bangles tubes made of plastic material manufactured out of virgin or regenerated Monomer. These A.P. bangles tubes are then mechanically cut in the shape of bangles of various thickness, as per requirements of customers. These A P. bangles tubes are articles made of plastic falling under Tariff Item No. 15A(2) of the First Schedule to the Central Excises and Salt Act, 1944. The respondents in their reply have stated that the details of manufacturing process. Their further case is that the petitioners cannot also claim any exemption under notification No. 38/73 dated 1-3-1973 as amended by notification No. 174/73 dated 8-9-1973 and it was stated that the exemption contained in notification No. 38/73 as amended, is applicable to A.P. Sheets and not to A.P, bangles tubes. As the petitioners manufacture A.P. bangles tubes, they are liable to payment of appropriate duty right from 1975.

Thus, it would appear that the respondents have denied the petitioners'' claim of exemption of their projects both under Tariff Item 15A(2) and notification No. 38/73 as amended by notification No. 174/73.

4. The principal question, which arises for consideration, is as to whether the acrylic plastic sheets, tubes and plastic bangles manufactured by the petitioners are exempt from excise duty underTariff Item No. 15A(2).

Item No. 15A-is as under:-

"Item No. 15A-PLASTICS

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__________ Item Tariff Description Rate of duty No. 1 2 3 ____________________

____ 15A

Artificial or synthetic resins and plastic materials and cellulose esters and ethers, and articles thereof- (1) The following artificial or synthetic Fifty per cent resins and plastic materials, and ad valorem cellulose esters and ethers, in any form, whether solid, liquid or pasty, or as powder, granules or flakes, or in the form of moulding powders, namely :- (i) Condensation, Polycondensation and Polyaddition products, whether or not modified or polymerised, Aminoplasts, Alkyds, Polyamides, Super polymides, Polyesters, Polyallyl esters, Polycarbonates, Polyethers, Polyethylene imines, Polyurethanes, Epoxide resins and Silicones; (ii) Polymerisation and copolymerisation products such as Polyethylene, Polytetrahaloethylene, Polyisobutylene, Polystyrene, Polyvinyl, chloride, Polyvinyl acetate, Polyvinyl chloroacetate and other Polyvinyl derivatives and Coumarone-Indene Resins; and (iii) Cellulose acetate (including) Cellulose diacetate or Cellulose traiacetate, Cellulose acetate butyrate and Cellulose Propionate, Cellulose acetate propionate, Ethycellulose and Benzylcellulose, whether plasticised or not, and plasticised Cellulose nitrate. (2) Articles made of plastics, all sorts Including Fifty per cent tubes, rods, sheets, foils, sticks, other ad valorem. rectangular or profile shapes, whether laminated or not, and whether rigid or flexible, including layflat tubings and polyvinyl chloride sheets, not otherwise specified. (3) Polyurethane foam Seventy five per cent ad valorem. (4) Articles made of Polyurethane foam Seventy-five per cent ad valorem. ______________________________________ ______________________________________ Explanation I.-For the purpose of Sub-item (2) "plastics" means the various artificial or synthetic resins or plastic materials or cellulose esters and ethers included in sub-item (1).

Explanation II.-This item does not include,-

(a) polyester films;

(b) electrical insulators or electrical insulating fitting or parts of such insulators or insulating fittings.

5. Sub-item (2) of Item 15A embraces within its scope "Articles made of plastics". Plastics i.e., plastics materials enumerated therein, are only illustrative. In the expression "all sorts", all and every type of plastic materials will fall in the description of "plastics". The words ''all sorts'' go with word ''plastics'' followed by the word ''including''. The word ''plastics'' has further been explained in Explanation I. It means the various artificial or synthetic resins or plastic materials or cellulose esters and ethers included in sub-item (i). There are three Sub-clauses of sub-item (1) and the plastic materials fall in Sub-clause (ii). It is an admitted case of the parties that through the process of polymerisation monomer turns into plastic and out of that, plastic artcles are manufactured. This question arose before the Gujarat High Court and the Gujarat High Court expressed its opinion on the construction of Tariff Item No. 15A(.2.) and Explanation I, in the case of Jalal Plastic Industries and Ors. v. Union of India and Ors. 1981 E.L.T. 653 (Guj.). After taking into consideration the process of manufacture of plastic bangles, it was observed that monomer is not a plastic material and that it becomes a plastic material when it is polymerised. The words "made of" occurring in the expression "articles made of plastics" were given the meaning the raw material out of which the articles are made. Undoubtedly the raw material out of which the plastic bangles are manufactured is monomer, whether virgin or regenerated. The petitioners are engaged in the manufacture of plastic bangles and acrylic plastic sheets, and tubes using monomer as the raw material, so the petitioners are engaged in the manufacture of articles made of monomer. Their plastic articles, thus, are made of monomer. In Jalal Plastic Industries case (supra) a question was formulated, viz., "Can we say that the plastic bangles are made of plastic within the meaning of sub-item (2) of Tariff Item 15A ?" This question was answered in the negative and it was observed as under :-

"Having carefully scanned sub-item (2) of tariff item 15A in the light of Explanation I read with sub-item (1) of tariff item 15A, we are of the opinion that the expression "articles made of plastics" means articles for the manufacture of which plastic material has been used as a raw material. It does not suggest, in our opinion, a nonplastic raw material which has undergone polymerisation process in course of manufacturing process."

S.M. Seth, J., expressed the above opinion after taking into consideration the contention advanced by Mr. Mehta on behalf of the Revenue that even if sub-item (2) is read with Explanation I and specifications given in Clause (ii) of sub-item (1) of tariff item 15A, no difference is made by virtue of the fact that monomer is not a plastic material. Mr. Mehta added that the expression "articles made of plastics" means an article which consists of plastic and not an article for the manufacture or production of which plastic material has been used. Seth, J., stated that if the contention as advanced by the counsel for the petitioner in that case is viewed in the light of the submissions made by him, then that contention must be upheld and if viewed in the light of submissions made by the counsel for the Revenue than the arguments advanced on behalf of the Revenue must be upheld. After having given consideration to the respective contentions, the learned Judge speaking for the Bench expressed the above view. It appears that the view is primarily based on as to what was the raw material out of which the product has come into being. The raw material has not been considered to be plastic and the raw material has been considered to be monomer and plastics and plastic materials had only come into being during the process of manufacturing. The end product is plastic bangles or acrylic plastic sheets/tubes and the raw material for this end product is indisputably monomer. I am in respectful agreement with the view of the Gujarat High Court that monomer is not a plastic material and that the petitioners (in the Gujarat case) have been manufacturing plastic bangles out of monomer by subjecting to the polymerisation process. They are not liable to pay excise duty on the bangles manufactured by them under Tariff Item 15A. Similarly in the present case the petitioners, who are manufacturing acrylic sheets/tubes and plastic bangles out of monomer virgin and regenerated by subjecting them to the polymerisation process, are not liable to excise duty and their products are not covered under Tariff Item 15A(2).

6. So far as acrylic plastic sheets and tubes are concerned, they themselves constitute plastics material out of which articles of plastic are manufactured, so both, the plastic sheets and plastic tubes, cannot be considered to be articles made of plastic. On this construction, as well, both these manufactured products, that is, A.P. sheets and A.P. tubes, do not attract excise duty under Tariff Item 15A, sub-item (2). Manufacture of A.P. sheets and tubes is an intermediate stage in the process of manufacture of plastic bangles.

7. In view of the above construction placed on Tariff Item No. 15A(2) in relation.to the products of the petitioners, it is unnecessary to examine the

question as to whether their products are exempt under the amended notification No. 38/73.

8. In the result, all the above writ petitions are allowed and it is declared that acrylic plastic sheets/tubes and plastic bangles do not attract excise duty under Tariff Item No. 15A(2) and the respondents are restrained from levying excise duty on these products.

