

(1990) 12 KL CK 0016

In the High Court Of Kerala

Case No : W.A. No's. 200-216, 231, 426 and 508 of 1988 and 100 of 1989

Superintendent of Central Excise

APPELLANT

Vs

Ancher Treads Pvt. Ltd.

RESPONDENT

Date of Decision : 13-12-1990

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3

Citation : (1991) ECR 180 : (1993) 65 ELT 480

Hon'ble Judges : V.S. Malimath, C.J;T.L. Viswanatha Iyer, J

Bench : Division Bench

Advocate : K. Prabhakaran, Addl. CGSC, for the Appellant; M. Pathrose Mathai, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Malimath, C.J.—The principal question that arises for consideration in these six appeals is as to whether masticated rubber is liable to excise duty under Entry 40.01 of the Schedule of Chapter 40 of the Central Excise Tariff Act, 1985. The learned single Judge has taken the view that no excise duty is leviable in respect of masticated rubber, firstly on the ground that natural rubber does not change its character and become a different substance by the process of mastication. The second reason assigned is that it is exempt, it being natural rubber under Notification No. 189/83, as amended by Notifications dated 10-2-1986 and 7-4-1986.

2. After hearing learned counsel on both sides, we are inclined to agree with the ultimate conclusion of the learned single Judge that masticated rubber does not attract excise duty, but not on the grounds stated by the learned single Judge but on a different ground to be adverted to presently. The second respondent in each of these appeals is the manufacturer of rubber tyres and the first respondent in each of these appeals is the person from whom the second respondent gets the job work done of masticating rubber, which process does not involve sale or purchase of rubber between parties. The word "masticate",

according to Webster's Third New International Dictionary, means -

"to work (rubber) on a machine so as to make it softer and more plastic before mixing with compounding ingredients".

The question for consideration is as to whether on natural rubber being subjected to the process of mastication any goods stand produced or manufactured so as to attract excise duty. Central Excises and Salt Act, 1944 falls under entry 84 of List I of III Schedule of the Constitution which reads :

"Duties of excise on tobacco and other goods manufactured or produced in India except -

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry."

It is, therefore, clear that excise duty can be levied on tobacco and other goods manufactured or produced in India, except exempted categories. Sub-section (1) of Section 3 of the Central Excises and Salt Act, 1944, which is the charging section, provides :

"There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as, and at the rates, set forth in the Schedule to the Central Excise Tariff Act, 1985."

Entry 40.01 of the said Schedule speaks of levy of excise duty at 15% on natural rubber, balatta percha, Guayule, chicle and similar natural gums, in primary forms or in plates, sheets or strips. Thus, it is clear that in order to attract excise duty, masticated rubber has to fall under any one of the items of rubber goods specified under entry 40.01. It is only if the goods are produced or manufactured in India that excise duty stands attracted.

3. The respondents have taken a positive stand that masticated rubber cannot be regarded as goods manufactured or produced in India, as it is only one stage in the process of manufacture of tyres. It is their case that any intermediary transformation of the rubber does not constitute manufacture of masticated rubber as goods on the ground that masticated rubber is of no commercial value and there is no such marketable goods by name "masticated rubber". If masticated rubber stands produced at the intermediary stage of manufacturing rubber tyres, it cannot be said that there is manufacture of goods by name "masticated rubber" by the respondents, as masticated rubber is not a marketable goods.

4. Reliance was placed in this behalf on the decision of the Supreme Court

reported in *Bhor Industries Ltd., Bombay Vs. Collector of Central Excise, Bombay*, wherein it is ruled :

"Under the Act (Central Excises and Salt Act), it is only the goods as specified in the Schedule to the Centra] Excise that could be subject to the duty. In order to be goods as specified in the entry the first condition is that as a result of manufacture goods must come into existence. For articles to be goods these must be known in the market as such or these must be capable of being sold in the market as goods. Actual sale in the market is not determinative but the articles must be capable of being sold in the market or known in the market as goods. Simply because a certain article falls within the Schedule it would not be dutiable under excise law if the said article is not "goods" known to the market. Marketability, therefore, is an essential ingredient in order to be dutiable."

The said decision has been followed and the same principle has been reiterated by the Supreme Court in the subsequent decision in *Collector of Central Excise, Baroda Vs. M/s. Ambalal Sarabhi Enterprises (P) Ltd.*, It is, therefore, not enough that goods in the name of masticated rubber comes into existence in the process of manufacture of tyres. For such articles to be goods to attract excise duty, it must be shown that masticated rubber is capable of being sold in the market as goods. Even assuming that masticated rubber falls within the Schedule, it would not be dutiable under the excise law, if the said article is not goods known to the market, as marketability is an essential ingredient in order to be dutiable.

5. We have, therefore, to examine as to whether masticated rubber is capable of being sold in the market or is known in the market as goods. The respondents have, in their affidavit filed in support of the writ petitions, taken a positive stand in this behalf as follows :

"This is merely a mechanical process whereby raw natural rubber is softened for mixing or compounding with chemicals or other materials to prepare it for manufacture of tyres. It involves only the passing of raw natural rubber several times through a set of two rollers rotating at different speeds in opposite directions. By the friction created by the rotating rollers, the natural rubber is softened and homogenised so as to make it easier to manipulate and mix chemicals and other materials into it during the next stage of compounding or mixing. During the process, no other materials are added to the rubber, except a negligible quantity (0.1%) of peptiser, which is added only to hasten the softening and homogenising process. The exact nature of such mastication and the degree to which rubber is thereby softened and homogenised is dependent on the requirements of particular rubber products manufacturers and, in the case of job workers such as the first petitioner, is decided by the suppliers of the rubber, such as the second petitioner. For this reason, and also because on keeping the masticated rubber reverts to its original hardness and characteristics, there is no market anywhere in the world where masticated rubber can be bought or sold. This is, therefore, not an item known to or in the market and is only in the nature of a semi-processed material."

Though a counter-affidavit has been filed by the appellants, these averments remain uncontroverted. Hence, there is no good reason why we should not accept the statement of the respondents to the effect that masticated rubber cannot be regarded as goods manufactured, as there is no market anywhere in the world where masticated rubber can be bought or sold. It is only in the nature of a semi-processed material, a stage in the process of manufacture of rubber tyres. It cannot, therefore, be regarded as goods manufactured, there being no market anywhere in the world where masticated rubber is bought or sold and as it is not an item known to the market by that name. We have, therefore, no hesitation in holding that masticated rubber cannot be regarded as goods produced or manufactured to attract excise duty. We have, therefore, no hesitation in agreeing with the view taken by the learned single Judge that no excise duty can be levied on masticated rubber, though for different reasons as stated above. We express no opinion in regard to the correctness or otherwise of the view expressed by the learned single Judge on other matters.

5A. For the reasons stated above, all these appeals fail and are dismissed. No costs.