(1995) 02 DEL CK 0058

In the Delhi High Court

Case No : C.W. No. 590 of 1974

Swastic Rubber Products Ltd. and Another APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 17-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 58 DLT 60 : (1995) 59 ECR 31

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Anu Hakshar, Bhaskar Raj Pradhan, Dhirendra Negi and R.N. Karanjawala, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

K. Ramamoorthy, J.—There are two writ petitioners, the first petitioner M/s. Swastik Rubber Products Ltd., is a Public Limited Company, second petitioner is a Secretary of the first petitioner and the shareholder. There are three respondents, first is the Union of India, second is the Asstt. Collector of Customs, Bombay, and the third respondent is Appellate Collector of Customs, Bombay.

2. The first petitioner is having its registered office at Kirkee, Poona, in the State of Maharashtra. It is engaged in the business of manufacturers and dealers in all kinds of rubber, synthetic fabrics etc. In or about the 5th of August 1969 the first petitioner imported a product called Viton B for the purpose of manufacture of various items or products of synthetic rubber from M/s. Du Pont Nemours International SA. At the time of the import, the Collector of Customs levied duty under tariff item 87 which read on that date:

All other articles any Revenue 60%

otherwise specified. ad valorem.

According to the first petitioner, the duty should have been levied under tariff item 39 which read on that date :

Rubber Raw Revenue 40% ad valorem

3. The first petitioner paid the duty levied under protest as it had to clear the cargo for its business. In or about 13th of November, 1969 the first petitioner made an application through his Clearing Agents for the refund of the excise duty collected by the Department. On 24th of July, 1970, second respondent Asstt. Collector of Customs rejected the application. That was affirmed in appeal by the Appellate Collector Customs. The first petitioner unsuccessfully approached the Union of India. On 11th of February, 1974 the Joint Secretary to Govt. of India passed the order dismissing the revision of the first petitioner. On 8th of May, 1974 the writ petition was instituted in this Hon''ble Court. On 9.5.1974 the writ petition was admitted by this Court and interim orders were passed on 31.5.74.

4. On 12th of August, 1970 i.e. after the import of the product by the petitioner in August 1969 by a Notification No. 76 the Custom Authorities brought Viton under item 82(3) as "artificial or synthetic resins and the plastic material in any form". Item 82(3)(a) was noticed in Tariff Finance Act, 1970. On 3rd of September 1974 an amendment application was filed by the petitioners in the writ petition seeking to change item No. 87 to renumbered as 83(2). On 13th of September, 1974 the amendment was ordered by this Court. In 1975, Customs Tariff Act, 1975 was enacted. The changes effected were the plastic and resin became classifiable under heading 39.01/06 and rubber synthetic became classifiable under heading 40.01-04. Again the petitioners sought further amendment of the writ petition and this Court by order dated 21st of November, 1976 permitted the amendment.

5. Learned Senior Counsel for the petitioner fairly brought to my notice that subsequent of the filing of the writ petition as per the interim orders passed by this Court provisional assessments were being made by the Department and the petitioners will be satisfied if a suitable direction is issued with reference to reliefs (ii) and (iii) in para 13 of the writ petition as amended directing the Department to finalise the matter in accordance with law after affording full and complete opportunity to the petitioners.

6. The point that arises for consideration in this case is whether as on 1969 Viton B came under item No. 39 or duty could be levied under the residuary item No. 87.

7. On 24th of July, 1970 the Asstt. Collector of Customs, Appraising Department (Revenue Section) Scindia House, Bombay-1 rejected the claim for refund by the petitioners on the ground that the goods on test were found to be co-polymerized products and they were correctly assessed to duty under item 87 Indian Customs Tariff and, Therefore, charged to countervailing duty under item 15A of the Central Excise Tariff. No reasons were given by the Asstt. Collector Customs and as submitted by the learned senior Counsel no opportunities were given to explain the position also. The first petitioner filed an appeal to the

Appellate Collector of Customs, Bombay. The first petitioner explained in detail referring to the views of the experts in that field as to why the assessment should be under item 39 of Indian Customs Tariffs in the following terms :--

"We are writing this to request you to please reconsider your decision and reassess "Viton B" as Synthetic Rubber under 39(1) ICT in view of following:

(I) Viton is a copolymer of vinyl dine Fluoride and Hexafluroproplene (Ref. Page No. 196 of Vanderbilt Rubber Handbook 1968 Edition). Many of the synthetic rubbers like SBR, Nitrite, Butyl are copolymers as detailed below:

(1) SBR is a copolymer of Styrene and Butadiene .

(2) Nitrile Rubber is a copolymer of Acrylonitrile and Butadiene p73

(3) Butyl is a copolymer of Isobutylene and Isoprene. And these copolymers are accepted as Synthetic Rubber. This shows that all copolymers are not Synthetic Plastics and Therefore Viton should not be classified as "Plastics" for the reason that it is a copolymer.

(II) Viton is a Fluorocarbon elastomer. Rubbers like Natural rubber, SBR, Nitrile, Neoprene, Butyl are also classified under Elastomers. (Refer Page 55 of Introduction to rubber technology by M. Morton-1963 Edition).

This shows that the terminology Elastomer is not restricted to Synthetic Plastics/ Resins only. Further we would like to state that Elastomers are divided into vulcanisable and non vulcanisable. (Ref. Page 33 of Introduction to Rubber Technology by M. Morton-Edition 1963). On this page you will find that the following Synthetic Resin/Plastics are described as Non Vulcanisable Elastomer. Polyethene; Polvinyl Chloride; Polyinyl Butryal; Teflon; Kel-F.

Rubbers like Natural rubber, SBR. etc. are vulcanisable Elastomers. Viton is also a vulcanisable Elastomer which is explained in detail on page 197 of Vandebuilt Rubber Handbook- 1968 Edition. Therefore Viton should be classified under synthetic rubber.

(III) The following is the definition given for Synthetic rubber on page 69E of Brussels Convention Section VII Chapter 40- Note No. 4.

(a) Unsaturated synthetic substances which can be irreversibly transformed into non-thermoplastic substances by vulcanization with sulphur, selenium or tellurium, and which, when so vulcanised as well as may be (without the addition of any substances such as plastidsers, fillers or reinforcing agents not necessary or the cross-linking), can produce non-thermoplastic substances which at a temperature between 15 and 20?C will not break on being extended to three times their original length and will return after being extended to twice their original length, within a period of two hours, to a length not greater than one and a half times their original length.

Such substances include cis-polyisoprene, polybuadiene, polychloro-butadiene

(GRM), polybutadiene-styrene (GRS), polychlorobutadi-ene-acrylonitrile (GRN), polybutadiene-acrylonitrile (GRA) and butyl rubber GRI):

(b) Thioplasts (GRP); and

(c) Natural Rubber modified by grafting or mixing with artificial plastic material, provided that it complies with the requirements concerning vulcanization, elasticity and reversibility in (a) above.

When Viton is vulcanised using the necessary cross linking agents but without adding any fillers and plasticizer, and tested as above, it meets the above definition.

We shall show you these test pieces for your observation and tests in the personal hearing. This would convince that Viton is a Synthetic Rubber.

(IV) Definition of Elastomer is given on page 433 of the condensed Chemical Dictionary sixth edition edited by Arthur and Elizabeth Rose (Reinhold Publishing Corporation) is as below.

"A Synthetic polymer with rubber like characteristics, but not necessary in such a degree as to make the material practically useful. Examples of commercial products are butyl rubber, polyurethene rubber, and silicone rubber".

This will also show that the Elastomer Viton should be considered as Synthetic Rubber".

7. On 23rd of July, 1971 the Appellate Collector of Customs without considering the various aspects came to the conclusion that Viton B is correctly assessed duty under 87 I.CT./15A Central Excise Tariff. The reasoning is as follows :--

"I have carefully considered the facts of the case and the contentions set forth in the appeal and during the hearing but observe that the subject goods "Viton B" is a fluoro elastomers based on a copolymer of hexafluoro propylere and vinylidene fluoride in the form of lumps. Further "Viton B" is stated to be used in the moulding of various products such as gaskets, Oring, packings, hoses, wire insulations, protective coatings etc. These uses are generally associated with plastics rather than with rubber. These uses of "Viton B" are/ not identical to that of natural rubber and Therefore "Viton B" does not qualify for classification under item 39 I.C.T. as "Rubber raw/Synthetic rubber".

8. The first petitioner preferred a revision application before the Commissioner (Revision Applications), Ministry of Finance, Department of Revenue and Insurance, New Delhi explaining again how the Appellate Collector of Customs had not appreciated the rule issued in the matter with reference to the opinions of the authorities and also mentioning the various properties and the strength of Viton B to stand high temperature. The explanation is as follows :--

"We have to offer following justification for revision for assessing Viton B as Synthetic Rubber under 39 ITC.

(I) Viton is a copolymer of vinyl dine Fluoride and Hexaluropropiyene (Ref. Page No. 196 of Vanderbilt Rubber Handbook 1968 Edition). Many of the Synthetic Rubbers like SBR, Nitrile, Butyl are copolymers as detailed below:

(1) SBR is a copolymer of styrene and Butadiene.

(2) Nitrile Ruber is a copolymer of Acrylonitrile and Butadiene.

(3) Butyl is a copolymer of Isobutylene and Isoprene.

And these copolymers are accepted as Synthetic Rubbers. This shows that all copolymers are not plastics and Therefore Viton should not be classified as "Plastics" for the reason that it is a copolymer.

(II) Viton is a Flucrocarbon Elastomer. Rubbers like Natural Rubber, SBR, Nitrile, Neoprene, Butyl are also classified under Elastomers. (Ref. Page No. 55 of Introduction to rubber technology by M. Morton 1963 Edition).

This shows that the terminology Elastomer is not restricted to Synthetic Plastics/ Resins only. Further we would like to state that Elastomers are divided into Vulcanisable and Non-Vulcanisable. (Ref. Page 33 of Introduction to Rubber Technology by M. Morion Edition 1953). On this page you will find that the following Synthetic Resin/ Plastics are described as Non-Vulcanisable Elastomer. Polythlene, Polyvinyl Chloride, Polyvinyl Butryal, Teflon, Del-F. Rubber like Natural Rubber, SBR etc. are Vulcanisable Elastomers. Viton is also a Vulcanisable Elastomer which is explained in detail on page 197 of Vanderbilt Rubber Hand Book-1968 Edition. Therefore Viton should be classified under Synthetic Rubber.

(III) The following is the definition given for Synthetic Rubber on Page 69-E of Brussels Convention Section VII Chapter 40-

Note No. 4.

(a) Unsaturated Synthetic substances which can be irreversibly transformed into non-thermoplastic substances by vulcanization with sulphur, selenium or tellurium and which when so vulcanised as well as may be (without the addition of any substances such as plasticisers, fillers or reinforcing agents not necessary for the cross-linking), can produce non-thermoplastic substances which at a temperature between 15 and 20?C , will not break on being extended to three times their original length and will return after being extended to twice their original length, within a period of two hours, to a length not greater than one and a half times their original length.

Such substances include cis-polyisoprene, polybutadiene, polychloro-butadiene(GIM), polyvutadiene-acrylonitrile(GRA)and butyl rubber (GRI):

(b) Thoplasts (GRP); and

(c) Natural Rubber modified by grafting or mixing with artificial plastic material, provided that it complies with the requirements concerning vulcanization, elasticity and reversibility in (a) above. When Viton is vulcanised using the necessary cross linking agents but without adding any fillers and plasticizer, and tested as above, it meets the above definition.

We shall show you these test pieces for your observation and tests in the personal hearing. This would convince that Viton is a Synthetic Rubber.

(IV) Definition of Elastomer given on page 433 of the condensed Chemical Dictionary sixth edition edited by Arthur and Elizabeth Rose (Rein-hold Publishing Corporation) is as below:

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(V) We have also attached herewith photostat copy of test results on sample of Viton B tested by M/s. Synthetic & Chemicals Ltd., Bombay. Test shows that Viton B is a Synthetic Rubber.

(VI) It has been mentioned in order in appeal under revision that uses of Viton are generally associated with plastics rather than with rubber and Therefore it has been assessed as "Plastics".

We have to offer following comments, in this respect:--

(1) The statement "These uses are generally associated with Plastics rather than with rubber" is very vague.

Natural Rubber and rubbers like SBR, Neoprene, Acrylonitrile which are already accepted as Synthetic Rubbers are used for making gaskets, rings, packings, hoses, wire insulations, protective coatings etc. Viton is also used for the same applications. Therefore Viton resembles very much to rubber and Synthetic rubber. We do not think it at all necessary to give evidences for the above mentioned applications of Natural Rubber, SBR, Neoprene and Acrylonitrile rubber. This is a fact which is well known to all the users of rubber parts.

(2) It is stated that in Public Notice that uses of Synthetic Rubber are identical to those of Natural Rubber. Therefore it is classified under 1CT 39.

Synthetic rubbers are developed mainly because of two reasons:

(a) Natural Rubber is available from specific areas which are nearer to equator, and where climatic conditions are favorable. Supplies available from natural resources are inadequate as compared to the increasing demand for rubbers all over the world. In order to meet the shortage and in order to overcome the dependence on Nature, Synthetic Rubber of the type SBRs was developed and is now used as a substitute ail over the world.

(b) Natural Rubber has got some deficiencies, Natural Rubber does not stand oils, flame, high temperature etc. In order to overcome these deficiencies, new Synthetic Rubbers are developed.

Thus you will find that Neoprene stands to oils, flame and heat, Acrylonitrile type of Synthetic Rubber stands oils, fuels and temperatures up to 120?C. However, these rubbers do not stand aromatic fuels and temperatures above 120?C. The new developments in Automobile Engineering, Aeronautics and other fields called for Synthetic rubber parts, which should stand aromatic fuels, flame, and very high temperatures up to 200?C. To meet these requirements, new Synthetic rubbers were continuously under development work. Viton came as the answer to these requirements. If you consider the history of the development of all Synthetic rubbers, you will definitely find that Viton has come up as a new development in the field of Synthetic Rubber Technology, to improve performance characteristics of rubber parts in the very severe service conditions.

We are attaching a bulletin No. 1971/76 Elastomers Note-book published by Du Pont. You will find on the very first page, that work was done by cooperative efforts of rubber manufacturers and not plastic manufacturers. This proves that Viton belongs to the family of Synthetic Rubber.

(VII) As per the current import policy the import of Synthetic Rubber is Canalised through STC. Naturally only for those items which fall under the definition of Synthetic Rubber a release order is given by the CCI and E, Delhi in consultation with the DGTD, for approaching the STC for getting requirement of Synthetic Rubber through STC. We have attached a photostat copy of the Release order issued by CCI & E No. Rubber/6/8/70-71/R.M. II. 5.8.71 dated 31st July, 1971 from which you would please observe that Viton is allowed to us for import only under the group of Synthetic Rubber".

9.-On 11th of February, 1974 the Ministry of Finance, Govt. of India i.e. Joint Secretary of the Govt. of India dismissed the revision application giving a different reasoning in the following terms:--

"Government of India have carefully considered the revision application and the pleadings made at the time of personal hearing and observe that the goods are of high molecular weight fluorocarbon co-polymer of Hexafluoropropyl-ene and vinylidene fluoride developed for certain typical and usage in view. These goods could be moulded to form O-rings oil seals and gaskets, for coating fabrics. They are unaffected by ozoe and are resistant to Chemicals, heat and radiation.

The goods are soluble in polar solvents like methyl ethyl ketone and the solution may be cast to form unsupported films or used as coatings in variety of substrates including fabrics and metals.

These physical and Chemical properties as well as the uses are not associated with Raw rubber as understood in technical and trade parlance which alone is classifiable under item 39 of ICT but compatible to fluoroplastics and resins.

The film forming properties from solutions of viton in polar solvents and coating properties of such solutions on metals and fabrics as recommended in the supplier''s catalogue furnished by the petitioners also exhibit sufficiently the resinous characteristics of the product.

Under the circumstances Government of India consider that the subject goods should be more appropriately classified as artificial resins and since resins obtained by co-polymerisation are specifically covered by the Central Excise item 15A(I)(ii), the levy of countervailing duty under the said Central Excise Item is also justified."

10. The petitioners filed the writ petition challenging the orders of the authorities. The prayer is in the following terms:--

"(i) That this Hon''ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or orders calling the record of proceedings, of the petitioners'' case and after going into the question of legality or propriety thereof to quash and set aside the three impugned orders dated 24th July, 1970, 23rd July, 1971 and 14th February, 1974.

(ii) That this Hon''ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ or direction or order under Article 226 of the Constitution of India directing the respondents, their officers, subordinates, servants and agents and other successors in office to withdraw and cancel the said impugned orders and refund the excess customs duty collected by them from the 1st petitioner as aforesaid, and further direct them to for-bear from assessing Viton B, Viton B-50, Viton E-60-C, all grades of Viton, Fluorei (all grades) and Technoflon (all grades) under item No. 87 as amended as item No. 82(3) of the Indian Customs Tariff by Custom Notification No. 76 dated 12.8.1970 as further amended as item No. 39-01/06 vide The Customs Tariff Act No. 51 of 1975 in future.

(iii) Pending the hearing and final disposal of this petition this Hon''ble Court be pleased to restrain the respondents, their officers, subordinates, servants and agents by an order of injunction of this Hon''ble Court from treating Viton B, Viton B-50, Viton E 60-C, all grades of Viton, Fluorel (all grades) and Technoflon (all grades) under Item No. 87 as amended as Item No. 82(3) of the Indian Customs Tariff by Custom Notification No. 76 dated 12.8.1970 as further amended as Item No. 39-01/06 vide The Customs Tariff Act No. 51 of 1975 while levying Customs Duty on the first petitioners.

(iv) That the respondents be directed to pay the petitioners'' cost of the present petition.

(v) For such other relief as the nature of the case my require."

11. The petitioners have explained fully, as stated above, in their revisions as to how the product Viton B would come under Item 39. After the reasoning given by the Govt. of India, dealing with the same in paragraph 6 of the petition the petitioners explained the position which reads as follows :--

"The petitioners say that in the trade and market both in India and abroad, the said item has not been treated, nor regarded as resin. Viton-B differs from resin and from resin products in terms of composition, performance and price also. The petitioners submit that Viton B can be moulded to form O rings, Oil Seals and gaskets for coating materials, the qualities which only rubber and/ or synthetic rubber possess. The petitioners further submit that consideration of the history of the development of all the synthetic rubbers, clearly establish that Viton has come up as a new development in the field of Synthetic Rubber Technology, to improve performance characteristics of rubber parts in the very severe service conditions. The petitioners further submit that unlike plastics and Resins, Viton has to be compounded like Natural Rubber with suitable vulcanizing agent in order to impart the useful rubber properties to the cast film. The petitioners further submit that so far there is not a single plastic or resin which has got the characteristics of vulcanization, elasticity and reversibility as are shown by rubbers. The petitioners submit that each synthetic rubber has these properties which clearly shows that Viton is a snythetic rubber and not a plastic/ resin. The petitioners further submit that there is thus an error on the face of the record itself."

In paragraph 7, the petitioners had stated as under :--

"The 1st petitioner says that if the trader was to go to the market and ask for Viton-B, he would not be given any resin or any product from resin. Hereto annexed and marked Annexure ''F'' is a true copy of the affidavit of a trader in support of the petitioners'' aforesaid contention."

12. In spite of the fact that 19 years have rolled by since the date of the amendment of the petition in 1976 and 21 years had expired since the date of the filing of the petition, the respondents had not chosen to file a reply. In Annexure-F an affidavit from an expert which is in the following terms has also been filed :--

"1. Chandrashekhar Raghavendra Kulkarni, age about years, of Poona, Indian Inhabitant and Technical Director of M/s. Standard Rubber Linings Private Ltd., Poona having its registered office and my office at Plot No. 10, M.I.D.C Poona-19 do hereby solemnly affirm and say as follows:-

1. I am Engineering & Rubber Technologist and have experience in this line of manufacturing rubber goods and automobiles for over 30 years last. I have been trained abroad in rubber technology. I also worked in senior positions in Hindusthan Motors, Dunlop Company Lathia Rubber P. Ltd. etc. At present I am the Technical Director of M/s. Standard Rubber Linings Private Ltd., Poona-19. I am familiar with various types of rubber products and/or products made of synthetic rubbers including Viton-B.

2. I know that M/s. Swastik Rubber Products Ltd. are manufacturing different kinds of rubber and synthetic rubber products including products from Viton-B. I say that Viton Band/or products made from Viton B are considered or known in the market as products of Synthetic rubber. I further say that they are not known

or considered in the market as resin or plastic products. I say that products of Viton B are different in composition, price and performance from those made of plastic and/or resin. I further say that they are not and cannot be substituted for one another as they materially differ in composition, price and performance."

13. The learned Senior Counsel Mr. Hakshar submitted that after the order passed on 11th of February, 1974 the Supreme Court of India had to consider a similar product in the similar circumstances in the case reported in Dunlop India Ltd. v. Union of India and Others, AIR 1977 SC.597. The Department took the view in that case that V.P. Latex was an aqueous dispersion of synthetic resin. The Supreme Court of India upheld the contention of the Dunlop India Ltd. that V.P. Lotex is a rubber product. While dealing with that the Supreme Court referred to the Import Trade Control Policy in paragraph 16 at page 601 in the following terms:--

"The appellants have also produced the Import Trade Control Policy, Volume I, for the year 1975-76 described during the arguments as the ''Red Book'' of the Commerce Ministry of the Government of India. It may be useful to quote the entire entry 150 at page 58:

Section II: Policy for individual items and the detailed policy for Actual Users:

Part & Sl. No. of ITC Description IMPORT POLICY

Schedule   Established Actual Users Importers

150 Rubber, raw and Nil gutta percha, raw. A.U. for import of Gutta percha, raw.

Requirements of actual users for the following items will be met by imports through public sector agency: --

(i) Synthetic rubber namely, Butyl rubber Acrylonitrile, Thikol, Polyisoprene Poly butadiene, Hypalon, Viton Polyacrylic EPDM, Chlonobutyi and Bro-mobutyl. Silicone rubber and/silicone rubbe master batches and ''ynthetic latex including Vinyl pyridine latex and copoly, mer of styrene butadiene latex, Nitrilre latex and polychloro-prene latex."

Therein it is clearly mentioned that Viton comes within the family, rubber.

14. It was contended on behalf of the Department that V.P. Latex is merely an adhesive and so is akin to resin and not to rubber. In paragraph 36 at page 606 the Supreme Court in the case referred to above has observed that how an article should be considered to decide whether it comes within one entry or the other that paragraph reads as follows :--

"We are, however, unable to accept the submission. It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry ,the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry."

15. Their Lordships of the Supreme Court again emphatically stated that how the fiscal policy should not put people in doubt and the classification by the Department should be clear. Paragraph 37 reads as follows :--

"It is good fiscal policy not to put people in doubt and quandary about their liability to duty. When a particular product like V.P. Latex known to trade and commerce in this country and abroad is imported, it would have been better if the article is co nomine, put under a proper classification to avoid controversy over the residuary clause. As a matter of fact in the Red Book (Import Trade Control Policy of the Ministry of Commerce) under item 150, in Section II, which relates to "rubber, raw and gutta percha, raw", synthetic latex including vinyl! pyridine latex and copolymer of styrene butadiene latex are specifically included under the sub-head "Synthetic Rubber." We do not see any reason why the same policy could not have been followed in the I.C.T. book being complementary to each other. When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause. The question of competition between two rival classifications will, however, stand on a different footing."

The learned Senior Counsel for the petitioner relied upon this passage and contended that the Department was not justified in taking the product of Viton B to residuary clause.

16. The view of the Supreme Court has been followed in later case by the Supreme Court in the following cases:--

Indian Aluminium Cables Ltd. Vs. Union of India and Others, .

Collector of Customs, Bombay Vs. Swastic Woollens (P) Ltd. and Others, .

Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co., : 1988(37)ELT480(SC) .

Keshavji Ravji And Co, & Others v. Commissioner of Income Tax, : [1990]183ITR1(SC) .

Othayath Lekshmy Amma and Another Vs. Nellachinkuniyil Govindan Nair and Others, .

Akbar Badrudin Jiwani of Bombay Vs. Collector of Customs, Bombay, .

Plasmac Machine Manufacturing Co. Pvt. Ltd. Vs. Collector of Central Excise, Bombay, .

Collector of Estate Duty, Madras Vs. Ratna Kumari Kumbhat (Mrs), Oswal Agro Mills Ltd. and Others v. Collector of Central Excise and Others, 1993 Supp (3) Supreme Court Cases 716.

In Indian Aluminium Cables Ltd. Vs. Union of India and Others, the Supreme Court referring to Dublop India Ltd. also observed as follows :--

"This Court has consistently taken the view that, in determing the meaning or connotation of words and expressions describing an article in a tariff schedule, one principle which is fairly well settled is that those words and expressions should be construed in the sense in which they are understood in the trade, by the dealer and the consumer. The reason is that it is they who are concerned with it and, it is the sense in which they understand it which constitutes the definitive index of the legislative intention. See Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, ; Minerals and Metals Trading Corporation of India, Ltd. Vs. Union of India (UOI) and Others, ; Dunlop India Ltd. and Madras Rubber Factory Ltd. Vs. Union of India (UOI) and Others, ; State of Uttar Pradesh and Another Vs. Kores (India) Ltd., ; and, Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others, ."

Therefore, I am of the view that Viton B falls clearly under item 39 and view taken by the respondents cannot at all be sustained in law.

17. As noticed above by me, that with reference to the import made by the petitioners subsequent to the filing of the writ petition provisional assessments have been made and, Therefore, I cannot deal with those assessments now at this stage because no. final orders have been made by the authorities in view of the pendency of this case. Therefore, I direct the concerned authorities dealing with the cases to proceed further and make final decisions in the matter after giving full opportunity to the petitioners and then pass final orders. It is needless to say that the petitioners will be at liberty to challenge the same, if there is need. The learned Senior Counsel also brought to my notice the decision of the Collector of Customs wherein he had taken a view in favor of the petitioners. The matter is pending adjudication in appeal and, Therefore, I refrain from saying anything on those aspects. Therefore, the relief prayed for in paras (ii) and (iii) of the prayers in paragraph 13 of the writ petition are ordered in these terms.

18. Relief No. (i) in paragraph 13 is granted and the writ petition is allowed and the orders dated 24th of July, 1970,23rd of July, 1971 and 11th of February, 1974 are quashed.

19. The learned Counsel for the petitioners submitted details of refund in the following terms:--

"1. Refund Application bearing No. SSJ-705/A-2483 was made on 13th November, 1969.

2. Total Custom Duty--Basic Rs. 20,490/- calculated at 60% + C.V. duty Rs.19,670.60 calculated at 36% of C.I.F. value + Basic Duty i.e., Rs.40,160.60 was paid on 5.8.1969, against Bill of Entry Cash No. 730dated 5.8.1969 Lbs of

Viton-B imported by Steamer Flying endeavor was classified under Item 87 I.C.T.

3. If the said consignment would have been classified under Item 391 CT as Synthetic Rubber, Basic Custom Duty of 27.5% i.e. Rs.9,391.25 only would have been payable.

4. Differential/Excess Custom Duty paid--Rs.30,769.35, which was claimed as refund by application dated 13.11.1969."

The amount refundable is Rs. 30,769.35. The first petitioner was deprived of its use by the orders passed by the various authorities. Following the principles laid down in Mangalore Chemicals & Fertilisers Ltd. v. Deputy Commissioner of Commercial Taxes, Mangalore Division, Mangalore and Others, 1993 Sale Tax Cas 265 (Karnataka High Court), Parekh Prints Vs. Union of India, and Kashyap Zip Ind. Vs. Union of India (UOI) and Others, , I direct the respondents to refund the sum of Rs. 30,769.35 to the first petitioner with interest @ 10% per annum from 13th of August 1969 up to the date of payment. There will be no order as to costs.