
(1997) 09 AHC CK 0243

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20 of 1985

Tech Invest (India) Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 16-09-1997

Acts Referred:

Citation : (1998) 74 ECR 495

Hon'ble Judges : R.K. Gulati, J;Om Prakash, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.

2. This writ petition raises a short question: whether the product: glass textolite sheet manufactured by the petitioner, falls under Tariff Item 15A(2) of the Central Excise Tariff, as averred by the respondents or under Tariff Item No. 68--a residuary Tariff item, as averred by the petitioner for the purpose of levying the excise duty.

3. The Tariff Item 15A(2) of the Central Excise Tariff came up for consideration before the Supreme Court in the case of The Collector of Central Excise, Hyderabad, Vs. M/s. Bakelite Hylam Ltd., and then the Supreme Court held:

Entry 15A(2) deals with articles of materials which are described in sub-item (1). The material which is described in sub-item (1) falls under the category of artificial or synthetic resins and plastic materials. The different products and processes by which they are derived are described in sub-entry (1). Sub-entry (2) describes Articles of this material in different forms such as boards, sheeting, sheets, films, whether lacquered or metallised or laminated or not and lay flat tubings. This entry does not refer to any composite material or composite article which consists not merely of artificial or synthetic resins and plastic materials but also such material in combination with other materials such as paper or glass fabric in the present case.

4. In the case of Geep Flashlight Industries Ltd. v. Union of India 1985 (22) ELT 3 : 1986 (6) ECR 430 (SC) : ECR C 753 SC, the Supreme Court further observed as under:

This Court said that a mere reference to Tariff Item No. 15A(2) would show that articles described there are plastic material in different shapes and forms and not articles made from such plastic material. There is a noticeable difference between plastic material in different shapes and forms such as tubes, rods, sheets etc. and articles made from such plastic materials such as a plastic torch. This Court further held that articles made of plastic "refer to articles made wholly of commodity commercially known as plastics and not articles made from plastics along with other material.

5. From the above reproduced material, it is manifest that Tariff Item 15A(2) covers only the items manufactured wholly by plastics. The case of the petitioner is that Textile sheet manufactured by the petitioner is made of two components, namely, glass fibres and resins and that the ratio of these components is 60-65% and 35-40% respectively. In paragraph 69 of the counter-affidavit, it is not disputed that the glass Textile sheet manufactured by the petitioner, is made of two components, namely, glass fibre and resins; the latter means artificial (Synthetic) substances manufactured by using chemical processes, such as condensation, poly-condensation, polymerisation, etc. The only averment made in paragraph 69 is that "Contents of resin have been found 30-62 per cent by Chemical Examiner, Central Revenue Control Laboratory, New Delhi from time to time. Percentage of resin contents in the product-glass Textile sheet and articles made thereof vary according to the specification and requirement of the customer." Since it is not disputed that glass Textile sheet manufactured by the petitioner is not made of plastics alone, the said product could not fall under Tariff Item 15A(2), which admits only those articles, which are made of plastics only.

6. The case of the petitioner is, therefore, fully covered by the decision of the Supreme Court in Bakelite Hylam Ltd., (supra). Thus, the glass Textile sheet manufactured by the petitioner, does not fall under tariff item 15A(2) of the Central Excise Tariff.

7. The writ petition, therefore, succeeds and is allowed. The impugned show cause notices of various dates and the impugned order dated 28.2.1994, issued by the Superintendent Central Excise and passed by the Assistant Collector, Central Excise, Meerut Division (Respondent Nos. 5 and 6 respectively) are quashed.