(1978) 01 MAD CK 0013

In the Madras High Court

Case No : Write Petition No. 4652 of 1975

Tufflite Plastics Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 10-01-1978

Acts Referred:
Central Excises and Salt Act, 1944 — Section 36

Citation : (1979) CENCUS 14 : (1978) 2 ELT 509

Hon'ble Judges : Mohan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohan, J.—This writ petition is for certiorari to quash the order of the Government of India, dated 6th May, 1975 confirming the demand of

excise duty made on the petitioner by the Assistant Collector of Central Excise, Coimbatore first Division, and the Appellate Collector of Central

Excise, Madras, in proceedings dated 14th November, 1973 and 24th January, 1974 respectively.

The short facts are as follows:-The petitioner company is manufacturing articles made out of glass fibre. The following articles are also

manufactured by it-

(1) Glass fibre b6ats

(2) Glass fibre bath tubs

(3) Glass fibre toilet seats

(4) Glass fibre wash-basins and other accessories.

The above articles are not charged with any excise duty, which is the common case.

2. Bath tubs are manufactured and supplied by the company with or without side covers to the customers who need them. Bath tubs vary from

4ï¿½ ft. to 6 ft. in length and are uniformly 18"" in width. These side covers are manufactured with the length from 4ï¿½ ft. to 6 ft. and 18 inches in

width. Bath tub side covers are invariably made to order and/or as side covers to bath tubs and delivered from the factory with the bath tubs or

subsequently sold as accessories. As these panels are not sheets or boards under item 15A of the Excise Tariff and as they are manufactured only

as accessory to bath tubs, they are not excisable items under the classification list.

3. The petitioner received a show cause notice on 8th May, 1972, from the Superintendent of Central Excise, MOR III, Coimbatore, in which it

was stated that the panels cleared by the petitioner from 17th May, 1971 to 30th March, 1972, have been cleared without payment of duty against

the tariff item 15A of the Central Excise Tariff and therefore the petitioner company was called upon to show cause why a duty of Rs. 15,393.39,

should not be demanded from them. It was also intimated therein that proceedings would be decided under Rule 10 of the Central Excise Rules.

The petitioner suitably replied stating that the articles manufactured by him are not excisable items and therefore denied its liability. Not being

satisfied with this explanation, the petitioner was assessed by the Assistant Collector to Excise duty and the demand was made to the petitioner for

the payment of a sum of Rs. 15,393.39. Against this order, the petitioner preferred an appeal to the Appellate .Collector of Central Excise on 13th

December, 1973. Ultimately the appeal came to be dismissed on 16th April, 1974. Thereupon, a revision was preferred u/s 36 of the Central

Excises and Salt Act, 1944 to the Government of India and that was dismissed on 15th May, 1975. It is under these circumstances, the present

writ petition has been preferred.

4. Mr. G. Vasantha Pai, learned counsel for the petitioner, argues two points before me. They are-(1) Item 15-A of the Excise Tariff cannot cover

the side panels manufactured by the petitioner, in which event the levy of duty on the petitioner would be illegal. (2) The order of assessment was

made by the Assistant Collector of Customs on 14/20th November, 1973. A subsequent demand notice dated 18th January, 1974 for Rs.

7,647.92 for the side panels manufactured between 6.4.1972 to 31.3.1973, was received. The Appellate Collector by his order confirmed the

original order of the Assistant Collector on 24.1.1974. Reckoned from the date of manufacture, the levy made beyond one year is clearly barred

and rule 10 cannot be invoked in such a case.

5. Mr. T. Chengalvarayan, learned counsel for the respondents, would submit that the side panels manufactured by the petitioner will fall under

Tariff item 15-A(2) because it is an article of plastic. Fibre glass is one of the main ingredients which goes into manufacture of these panels.

Therefore, the bath tub side coyer manufactured by the petitioner has been correctly classified as ''rigid plastic board'' i.e. as an article made of

plastics and falling under Tariff Item No. 15-A(2). Merely because'' other materials like synthetic resins are used in the manufacturing process, it

does not alter its character as plastic. Therefore, no valid exception could be taken to the levy.

6. In order to appreciate the rival contentions it is necessary for me to extract the Tariff Item No. 15-A(2). It reads-

Description Rate of duty

Articles made of plastics, all sorts, including 40% ad valorem.

tubes, rods, sheets, foilssticks, other

rectangular or profile shapes, whether laminated

or not, and whether rigid or flexible, including

lay flat tubings and polyvinyl chloride sheets.

not otherwise specified.

The explanation states-

For the purpose of Sub-section (2) ''Plastics'' means the various artificial or synthetic resins or plastic materials included in sub-item (1).

7. In this case the question I have to address myself is whether the side panels, only intended as a cover for the bath tub manufactured by the

petitioner, could ever be considered as a ''rigid plastic Board'' as contended by the respondents ? Functionally having regard to the size of the

manufactured the mould contained on the board, it is undoubtedly an accessory to the bath tub, as the enclosed leaflet would clearly disclose. But I

do not go by the mere functional test.

8. I am also alive to the decisions of the Supreme Court, which lays down that in matters like this the department has got a wide discretion with

regard to classification of an item. However, where that classification is perverse, certainly the Court can interfere. It has been so laid down in The

Collector of Customs, Madras Vs. K. Ganga Setty, . Therefore, what is the proper test that has to be adopted ? It is laid down in The English

Electric Co. of India Ltd. Vs. The Superintendent, Central Excise and Others, , how a particular commodity or goods is understood in the popular

or in common sense or by the trading community. The side covers for the bath tubs manufactured by the petitioner with the peculiar board is not

understood commercially as ''plastic rigid board''. Therefore, I am clearly of the view that item 15-A is not attracted. Once it is so held, the

petitioner is exempt from excise duty. In this view, it is not necessary for me to decide whether Rule 10 could be invoked by the respondents for

levying an excise duty on the petitioner.

Consequently the writ petition will stand allowed. However, there will be no order as to costs.