

(1989) 04 BOM CK 0061

In the Bombay High Court

Case No : Appeal No. 344 of 1989 in Writ Petition No. 282 of 1981

Union of India

APPELLANT

Vs

Ceat Tyres of India Ltd.

RESPONDENT

Date of Decision : 11-04-1989

Acts Referred:

Citation : (1990) 26 ECC 279 : (1990) ECR 235 : (1989) 43 ELT 267

Hon'ble Judges : Mehta, J;B. Lentin, J

Bench : Division Bench

Judgement

Mehta, J.—The issue arising in this appeal is whether the dip solution made use of by the Respondent-Company in the manufacture of tyres attracts the excise duty under Tariff Item No. 15A(1). Tariff Item No. 15A(1) relates to artificial or synthetic resins and plastic materials or artificial resins obtained by esterification of natural resins or of resinic acids.

2. The learned Single Judge was pleased to grant rule in terms of prayer (b) of the petition on the ground, firstly, that the dip solution was not an artificial or synthetic resin, and secondly, that it was not a marketable commodity and hence would not attract excise duty. The Delhi High Court had occasion to consider this issue in the case of Indian Plastics and Chemicals Pvt. Ltd. v. Union of Indian and Others, reported in 1981 E.L.T. 108 (Del.), wherein it was stated that artificial or synthetic resin in liquid form cannot attract Tariff Item No. 15A(1). The dip solution at best could be considered as a solution of resin which was not covered by the aforesaid entry.

3. Mr. Taleyarkhan, learned Counsel appearing on behalf of the Respondent-Company, has drawn our attention to a recent judgment of the Supreme Court in the case of Bhor Industries Ltd., Bombay Vs. Collector of Central Excise, Bombay,], wherein Their Lordships observed :-

"This view was reiterated again in Union Carbide India Limited Vs. Union of India (UOI) and Others, where Pathak, J., as the learned Chief Justice then was,

speaking for the Court observed that in order to attract excise duty the article manufactured must be capable of sale to a consumer. The expression "goods manufactured or produced" must refer to goods which are capable of being sold to the consumer. 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 under the Schedule to Central Tariff Act, 1985."

There does not appear to be any doubt that the dip solution is not a marketable commodity. The Respondents, through the affidavit of their expert S. Krishnamoorthy, have shown that the dip solution is not a marketable product. The Appellants have not produced any material to controvert that position.

4. We are of the view that the learned Single Judge was right in granting rule in terms of prayer (b) on the ground that the dip solution not being on artificial or Synthetic resins would not attract Tariff Item No. 15A(1), and secondly, that it was not a marketable commodity. Hence the Appellants were not liable to pay excise duty on the dip solution. We see no reason for interference with the order of the learned Single Judge.

5. The appeal stands dismissed.