courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 19/08/2026

(1988) 10 BOM CK 0018

In the Bombay High Court

Case No : Appeal No. 1343 of 1988 in writ petition No. 488 of 1982

Union of India	APPELLANT
Vs	
Shakti Industries Pvt. Ltd.	RESPONDENT

Date of Decision : 31-10-1988

Acts Referred:

Citation : (1989) 39 ELT 509

Hon'ble Judges : Sujata V. Manohar, J;B. Lentin, J

Bench : Division Bench

Judgement

Lentin, J.—Duty was sought to be levied on a product at the intermediate stage in the process of manufacture of the final product, namely varnish. The product at the intermediate stage is nothing but a brown viscous sticky mass in an unfinished condition, incapable of being marketed in that condition. To that end there is the affidavit of one Dr. S. P. Potnis, the relevant excerpts where of are as under :-

"10. For a product to be resin it must be identifiable by way of its melting/ softening points, chemical properties like acid a value, sap value, iodine value and molecular weight as determined by intrinsic viscosity. The product under question which is a solution/dispersion in M-oresol and is in form of "brown sticky mass" cannot be characterised as resin as is generally known by any of the above properties. The separation of whatever resin which is present in this brown sticky mass is possible only through elaborate processing steps and it is not possible by simple techniques of evaporation of solvents. The product therefore does not fit in the normal definition of resin and it is mixture of different components and not a single entity.

*** *** ***

"13. If one examines the product removed from kettle-I "brown sticky mass" this is not a solid and is a mixture of saturated polyester resin and metacresol solvent, it cannot be used therefore for textile fibre, it cannot be used for

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/union-of-india-appellant-hash-shakti...

moulding, it cannot be used for FRP construction.

*** *** ***

"14. I further say that the product at this stage is different in case of individual manufacturer of wire enamels, and the unfinished product of one wire enamel manufacture cannot be used by even another manufacturer of wire enamel unless the finishing knowhow is given. The possibility of use of such unfinished product by consumer of wire enamel/insulating varnishes who use the product as available directly for coating on the wire, does not therefore arise under any circumstances.

*** *** ***

"16. I further say that in case of product at stage I "brown sticky mass", apart from the knowhow for adding the required solvent mixture and catalyst type and quantity, further modification/finishing requires specific equipment having facilities for heating, stirring, etc., which it is not available with any normal users/ consumers of wire enamel/insulating varnishes. It is therefore absolutely clear that this product "brown sticky mass" obtained at stage-I under the processing conditions of M/s. Shakti Insulated Wires P. Ltd. cannot be used as a polyester resin by any industry, including wire enamel industry, and as such this is not a product of commercial use or "marketable goods" under any condition, or by any method of classification.

"17. In view of the statement of facts made above my experience in the field of plastics for last 25 years, I certify with absolute correctness that the product obtained at stage-I of the processing conditions used by M/s. Shakti Insulate Wires Pvt. Ltd., cannot be called a resin either from the accepted definition of resin or from the point of its commercial use or marketability."

2. Further in Union Carbide India Limited Vs. Union of India (UOI) and Others, , it was held by the Supreme Court as under :-

"6. It does seem to us that in order to attract excise duty the article manufactured must be capable of sale to a consumer. Entry 84 of List I of Schedule VII of the Constitution specifically speaks of "duties of excise on tobacco and other goods manufactured or produced in India ....", and it is now well accepted that excise duty is an indirect tax, in which the burden of the imposition is passed on to the ultimate consumer. In that context, the expression "goods manufactured or produced" must refer to articles which are capable of being sold to a consumer. In Union of India v. Delhi Cloth & General Mills 1963 Supp.1 S.C.R. 586: 1977 E.L.T. (199) , this Court considered the considered the meaning of the expression "goods" for the purposes of Central Excises and Salt Act, 1944 and observed that "to become ''goods'' an article must be something which can ordinarily come to the market to be brought and sold", a definition which was reiterated by this Court in South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, ."

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/union-of-india-appellant-hash-shakti…

3. In the light of the above, the learned single Judge was, by his judgment and order dated 30th July, 1988, perfectly correct in allowing the writ petition and making the Rule absolute.

4. Appeal dismissed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/union-of-india-appellant-hash-shakti…