(1985) 09 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Special Appeal No''s. 572, 662 to 670 of 1982 and 10 to 13 of 1983

Union of India (UOI) APPELLANT

Vs

Raish Plastic and Others RESPONDENT

Date of Decision : 20-09-1985

Acts Referred:

Citation : (1986) 10 ECC 389 : (1987) 32 ELT 541

Hon'ble Judges : S.K. Mal Lodha, J;J.R. Chopra, J

Bench : Division Bench

Advocate : J.P. Joshi, for the Appellant; Rajendra Mehta, for the Respondent

Final Decision : Dismissed

Judgement

1. These 15 special appeals before us arise out of a common judgment dated May 6, 1982, passed by a learned Single Judge, by which he allowed 15 writ petitions, which have given rise to these appeals and declared that acrylic plastic sheets/tubes and plastic bangles do not attract excise duty under Central Excise Tariff ("the Tariff") Item No. 15A(2), of the First Schedule to the Central Excises and Salt Act, 1944 (No. 1 of 1944) (for short "the Act"), and the appellants, who were non-petitioners in the writ petitions, were restrained from levying excise duty on the aforesaid products.

2. The question involved in these special appeals is common and so, they were heard together and we consider it proper to dispose of them by a common order.

3. The facts leading to these appeals are substantially the same and, therefore, we shall notice the facts in D.B. Civil Special Appeal No. 572/82 : Union of India and Ors. v. Raish Plastics. This appeal has arisen out of S.B. Civil Writ Petition No. 1543/80 Raish Plastics and Others Vs. Union of India (UOI), The petitioner-respondent manufactures acrylic plastic sheets, flat or round, and plastic bangles, through cylindrical process. While manufacturing the aforesaid articles, the petitioner-respondent uses regenerated monomer manufactured in its own

factory out of plastic scraps and also purchases regenerated monomer from the market. The petitioner-respondent has stated in the writ petition that the monomer virgin is purchased by it from Polymer Corporation of Gujarat Ltd., Baroda. The petitioner-respondent has been enjoying exemption from Central Excise Duty and were not required to obtain any licence. The manufacturers of the plastic bangles were enjoying this exemption from September, 1973 when the original Notification No. 38/73-C.E. dated March 1, 1973 was amended by Notification No. 174/73-C.E., dated September 8, 1973, whereby exemption was granted to acrylic sheets, if produced out of monomer. The petitioner-respondent claims its products wholly exempt from payment of the Central Excise Duty. The Superintendent, Central Excise, Range, Jodhpur, directed the petitioner-respondent not to sell its products manufactured out of monomer virgin till orders of the Central Excise Department. Such a direction was also given to the manufacturers of A.P. Bangles of Jodhpur. Representation was made through Association, namely the Plastic Industries Association. The office-bearers of the Association met the Assistant Collector, Central Excise, Range, Jodhpur on July 9, 1980 and explained the entire process of manufacture to him. It is said that the Assistant Collector visited the factory of M/s. Ambica Plastic, Pratap Nagar, Jodhpur, and the manufacturing process was shown to him. However, the Superintendent, Central Excise, Range, Jodhpur sent letter Annexure 1 dated July 15, 1980 to the President, Plastic Bangles Association, Jodhpur. The letter reads as under :-

"CENTRAL EXCISE RANGE JODHPUR

No. G/-6/21/79/9233 Dated 15-7-1980. To

The President,

Plastics Bangles Association,

Choorigar Bazar,

Jodhpur.

Dear Sir,

Sub : Central Excise, Excisability of A.P. tubes - regarding.

The A.P. tubes/bangles manufactured out of M.M. Monomer virgin is excisable. The regenerated monomer brought from outside is also treated at par with virgin M.M. Monomer. You are, therefore, requested to advise all the Association''s members, manufacturing the said goods, should obtain Central Excise licence IMMEDIATELY.

Please also note that manufacture and clearance of the said goods should be carried on under Central Excise Rules, 1944.

Yours faithfully

Sd/-

Kartarchand

(KARTAR CHAND)

15-7-1980"

A perusal of this letter shows that the petitioners, who are respondents in these appeals, were required to obtain central excise licence and they were informed that A.P. tubes/bangles manufactured out of monomer virgin are excisable and the same is the position of the regenerated monomer brought from outside. The petitioners filed the writ petitions, out of which these appeals have arisen challenging the levy of excise duty on A.P. sheets, tubes and bangles manufactured by them out of monomer virgin as well as regenerated, whether manufactured by them or purchased by them from outside. In all the writ petitions, the petitioner-respondents have prayed that the letter Annexure 1 dated July 15, 1980 may be quashed and the appellants (non-petitioners in the writ-petitions) may be restrained from enforcing the same against them.

4. The writ petition was contested by the appellants. It was stated in the reply that the petitioners-respondents are engaged in the manufacture of A.P. bangles only, but they first manufacture A.P. bangles tubes made of plastic material manufactured out of virgin or regenerated monomer. These A.P. bangles tubes are then cut in the shape of bangles of various thickness according to the requirements of the customers. The defence taken was that the A.P. bangles tubes are articles made of plastic falling under Tariff Item No. 15A(2) of the First Schedule to the Act. In the reply, the respondents stated the details of manufacturing process. It was further stated that the petitioner-respondents cannot claim any exemption under Notification No. 38/73 dated March 1, 1973, as amended by Notification No. 174/73 dated September 6, 1973 and further it was stated that the exemption contained in Notification No. 38/73 as amended, is applicable to A.P. sheets and not to A.P. Bangles tubes and as the petitioner-respondents manufacture A.P. bangles tubes, they are liable to payment of appropriate duty right from 1975. It will be clear from the defence taken by the appellants in the reply to the writ petitions that according to them, the petitioner-respondents cannot claim exemption of their products both under Tariff Item No. 15A(2) and Notification No. 38/73 as amended by Notification No. 174/73.

5. The learned Single Judge, by a common Judgment dated May 6, 1982, held that the petitioner-respondents, who are manufacturing acrylic sheets/tubes and plastic bangles out of monomer virgin and regenerated by subjecting them to the polymerisation process, are not liable to excise duty and their products are not covered under Tariff Item 15A(2). The learned single Judge did not go into the question of exemption under the amended Notification No. 38/73 in view of the finding recorded by him that the products of the petitioner-respondents are not covered by the Tariff Item No. 15A(2). He, therefore, while allowing the Writ Petitions, declared that acrylic plastic sheets/tubes and plastic bangles do not attract excise duty under Tariff Item No. 15A(2) and the appellants were

restrained from levying excise duty on these products. The appellants question the legality and correctness of the aforesaid judgment of the learned Single Judge by filing these appeals.

6. We have heard Mr. J.P. Joshi assisted by Mr. J.L. Daga, learned counsel for the appellants and Mr. Rajendra Mehta, who has appeared on behalf of the respondents in each of the fifteen appeals.

7. On the basis of the submissions made by the learned counsel appearing for the parties, the Principal question which crops up for examination is whether the acrylic plastic sheets, tubes and plastic bangles manufactured by the petitioner-respondents do not attract excise duty under Tariff Item No. 15A(2).

8. The First Schedule mentions the Tariff Item No. 15A of the Tariff makes mention of ''Plastics''. We may read Item No. 15A which was in vogue during the relevant time, which is as under :-

"Item No. 15A - PLASTICS -- Item No. Tariff Description Rate of duty -- (1) (2) (3) -- 15A Artificial or synthetic resins and plastic materials and cellulose esters and ethers, and articles thereof - (1) The following artificial or synthetic Fifty Per resins and plastic materials, and cellu- cent ad valo- lose esters and others, in any form, rem whether solid, liquid or pasty, or as powder, granules or flakes, or in the form of moulding powders, namely :- (i) Condensation, Polycondensation and Polyaddition products, whether or not modified or polymerised,Amino- plasts, Alkyds, Polyamides, Super polymides. Polyesters, Polyallyl esters, Polycarbonates, Polyethers, Polyethylene imines, Polyurethanes, Epoxide resins and Silicones ; (ii) Polymerisation and co-polymerisa- tion products such as Polyethylene, Polytetrahaloethylenes, Polyisobuty -lene, Polystyrene, Polyvinyl chloride, Polyvinyl acetate, Polyvinyl chloroa- cetate and other Polyvinyl derivati- ves and Coumarone-Indene Resin; and (iii) Cellulose acetate (including cellu- lose diacetate or Cellulose triac-etate), Cellulose acetate butyrate and Cellulose Propionate, Cellulose acetate propionate, Ethylcellulose and Benzyl-cellulose, whether plasticised or not, and plasticised Cellulose nitrate. (2) Articles made of plastics, all sorts, Fifty per including tubes, rods, sheets, foils, cent ad valo- stocks, other rectangular or profile rem shapes, whether laminated or not, and whether rigid or flexible, including lay- flat tubings and polyvinyl chloride sheets, not otherwise specified. (3) Polyurethane foam Seventy five per cent ad valorem (4) Articles made of Polyurethane foam. Seventy-five per cent ad valorem --

Explanation I.- For the purpose of sub-item (2), "plastics" means the various artificial or synthetic resins or plastic materials or cellulose esters and ethers included in sub-item (1).

Explanation II. - This item does not include, -

(a) polyester films;

(b) electrical insulators or electrical insulating fittings or parts of such insulators or insulating fittings"

Principally, we are concerned with sub-item (2) of Item No. 15A(2). The words used therein are "articles made of plastics", which mean that if the plastic has been used in manufacture of the finished articles, then, Item 15A(2) shall be attracted. In this sub-item (2), various articles have been mentioned. This shows that the articles envisaged by sub-item (2) of Item No. 15A are only inclusive and illustrative and not exhaustive. Here, it is significant to note that expression ''all sorts'' has been used. This shows that the articles mentioned therein are not exempted articles, which are made of plastic. A perusal of Item 15A(2) shows that it embraces within its scope "articles made of plastics". An explanation has been appended to it and according to it, the word ''plastics'' used in sub-item (2) of Item 15A means the various artificial or synthetic resins or plastic materials or cellulose esters and ethers included in sub-item (1) of Item No. 15A. In view of the finding that has been recorded in favour of the petitioner-respondents, and which is strenuously challenged before us on behalf of the appellants, the question for examination is whether the monomer which undergoes the process of polymerisation which results in manufacture of acrylic sheets/tubes and from that, ultimately, plastic bangles are manufactured by cylindrical process, attract Tariff Item 15A(2). We shall have to see whether the nature and character of goods, which in this case are acrylic sheets and tubes, at intermediate state, are relevant for the purpose of classification of the articles made of plastic.

9. Learned counsel for the respondents has invited our attention to Union of India (UOI) and Others Vs. Ahmedabad Manufacturing and Calico Printing Co. Ltd. (Calico Mills), Ahmedabad, Their Lordships considered the question of classification of goods under the Central Excises and Salt Act, 1944. The precise question before their Lordships was whether goods in question, in that case, fell under Item 19 or Item 22 of the First Schedule of the Act. In that connection, R.S. Venkataramiah, J., made the following observation :-

"Having regard to the process involved in the manufacture of ''Calikut Special'' by the respondent, we are of the view that it is not possible to hold that the character of goods at the intermediate stage of production could be taken into consideration for determining the liability under the Act. The process involved in the instant case after intermediate stage referred to above formed an integral part of the manufacture of the produce in question and the classification of the manufactured product for purposes of excise duty should depend upon its nature and character and its final stage of production unless a contrary intention appears from the statute."

(Emphasis added)

It follows from the aforesaid decision that the classification of the manufactured products for the purpose of excise duty depends upon its nature and character at its final stage of production after all the integral, incidental or ancillary processes have been completed and further that the character of the goods at the intermediate stage of production cannot be taken into account for determining the classification under the Act, unless contrary intention appears from the statute. So, it follows that for the purpose of attracting sub-item (2) of the Tariff Item 15A of the First Schedule, we shall have to take into account the final product on which duty becomes leviable and not the intermediate process. In other words, the preparation of the acrylic sheets or tubes from monomer which is raw-material, is an intermediate process for the manufacture of the plastic bangles and, therefore, sub-item (2) of the Tariff Item 15A of the First Schedule of the Act will not be attracted because that envisages articles made of plastics.

10. An identical question arose before the Division Bench of the Gujarat High Court in Jalal Plastic Industries and Others Vs. Union of India and Others, It may be stated that the question has arisen in the similar circumstances with which we are concerned in these appeals. While considering the expression "articles made of plastics" referred to in Item 15A(2) read with sub-item (1) of Tariff Item 15A, it was held that the "articles made of plastics" means articles for the manufacture of which plastic material has been used as raw-material and that it does not suggest a non-plastic raw-material which has undergone polymerisation process in course of manufacturing process.

11. From the words used in sub-item (2) of Tariff Item No. 15A, and the reason given in Jalal Plastic Industries and Others Vs. Union of India and Others, it is clear that the raw-material for the manufacture of plastic bangles in this case, being monomer, will not attract the applicability of sub-item (2), of Tariff Item No. 15A. The learned single Judge has correctly summed up the reasons given in the aforesaid Gujarat High Court Judgment, with which we, with profound respect, agree. To quote the learned Judge :--

"...that monomer is not a plastic material and that the petitioners (in Gujarat case) have been manufacturing plastic bangles out of monomer by subjecting to the polymerisation process. They are not liable to pay excise duty on the bangles manufactured by them under Tariff Item No. 15A. Similarly in the present case the petitioners, who are manufacturing acrylic sheets/tubes and plastic bangles out of the polymerisation process, are not liable to excise duty and their products are not covered under Tariff Item 15A(2)."

It is, thus, clear that the raw-material for the manufacture of plastic bangles in this case, being monomer, will not attract the applicability of sub-item (2) of the Tariff Item 15A.

12. The upshot of the above discussion is that the petitioner-respondents, who at the relevant time had manufactured acrylic sheets/tubes and plastic bangles out

of monomer virgin and re-generated monomer by subjecting them to polymerisation process, are not liable to excise duty and the products therefrom are not covered under Tariff Item No. 15A(2). Thus, the view taken by the learned single Judge is correct, and no case for interference with that is made out.

13. No other point was pressed by the learned counsel for the appellants for our consideration, in these appeals.

14. The result is that these appeals have no force and are consequently, dismissed. In the circumstances of the case, there will be no order as to costs of these appeals.

