Ceat Tyres of India Ltd. Vs Union of India and others

Court: Bombay High Court

Date of Decision: June 23, 1987

Acts Referred: Central Excises and Salt Act, 1944 â€" Section 3

Citation: (1987) 3 BomCR 485 : (1989) 22 ECC 110 : (1987) 30 ELT 857

Hon'ble Judges: H. Suresh, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner, a company, has a factory in which it manufactures tyres, tubes and other rubber products. The process of manufacturing tyres,

involves the making of what is known as a tyre carcass consisting of rubberised rayon and nylon cords. Such rayon and nylon cords are coated

with a rubber compound, but before they are so coated, it is necessary to treat them another solution in order to achieve a good of rubber to such

cords. The solution that is used in the tyre industry is generally described as a Resorcinol Formaldehyde Latex mix or dip solution which is a

mixture of six substances known as resorcinol, formaldehyde caustic soda, styrene butadine latex, vinyl pyeidine latex and water. The question in

this petition is as to whether this dip solution becomes liable for any excise duty and whether this item comes within item No. 15A of the Tariff.

2. The petitioner says that this mixture has to be consumed within a few hours of its manufacture as after some time the same becomes unusable.

The said solution is prepared within the factory of the petitioner and it is consumed within the factory itself and it is at no time or stage removed

from the said factory anywhere else.

3. Some time in June 1977 certain samples of the said dip solution were drawn by the Inspector of Central Excise and were sent to the Deputy

Chief Chemist for test. For the purpose of the test the petitioner supplied the requisite information including the composition of the said dip solution.

The Chemist gave his report on the basis of which the department informed the petitioner that the said dip solution fell under item No. 15A(1)(i) of

the Tariff of the Central Excise and Salt Act. It appears that when the department passed the aforesaid order the petitioner had not been heard

and, therefore, the petitioner had to file a writ petition in this Court being writ petition No. 525 of 1978. However, on April 25, 1978 the said

petition was withdrawn on an assurance given by the respondents that no orders would be passed in the said matter without furnishing, to the

petitioner, a copy of the said test report and without hearing the petitioner. Accordingly, a copy of the said report was furnished to the petitioner

and the petitioner was also heard. The petitioner was also given an opportunity to cross-examine the Deputy Chief Chemist who gave the report to

the department.

4. After such hearing, by an order dated April 24, 1980, the Assistant Collector of Central Excise came to the conclusion that the said dip solution

was assessable to duty under item No. 15A of the said Tariff. As against the said order the petitioner preferred an appeal to the Collector of

Central Excise, and during the pendency of the appeal, the petitioner filed the present writ petition. Thereafter, by an order dated April 21, 1981,

the Collector of Central Excise reversed the decision given by the Assistant Collector and held that the said dip solution was not excisable under

Tariff item No. 15A. It appears that the Government has gone in review and the same is still pending.

5. Before I deal with the relative merits of the case, I must set out the relevant portion of Tariff item No. 15A(1) and it is as follows :

Artificial or synthetic resins and plastic materials, and other materials and articles specified below -

(1) ....artificial resins obtained by esterification of natural resins or of resinic acids (ester gums); chemical derivatives of natural rubber (for example,

chlorinated rubber, rubber hydrochloride, oxidised rubber, cyclised rubber); other high polymers, artificial resins and artificial plastic materials,

including alginic acid, its salts and esters; linoxyn;

6. It is the contention of Mr. Talyarkhan, who appears for the petitioner, that this dip solution cannot be considered as artificial or synthetic resin at

all and, therefore, it could never have been considered under item No. 15A(1) of the Tariff. He also contends that this dip solution is not being sold

from the factory and in any event it is not capable of sale to any consumer. He further submits that the department has not been able to show as to

how this item can be considered as a marketable item and that, therefore, this could be charged for excise.

7. In this connection Mr. Talyarkhan firstly drew my attention to certain paragraphs wherein we find certain answers given by the Deputy Chief

Chemist when he was cross-examined. The relevant portions are as follows :

A. 5. The factory is first preparing a resorcinol formaldehyde Resin in aqueous solution. This is then mixed with rubber latex which they called as

dip solution. This dip solution is taken for the tyre cord dipping.

Q. 6. Whether at any stage any stabilisers were added to the solution or did it contain any ?

A. 6. As per the factory''s declaration and the process shown to me they do not add any stabilisers.

Q. 34. As far as processing of dip solution is concerned by the Ceat, there is no separation of the resin by precipitation or other means. Also the

reaction is not arrested and it continues and therefore the material is to be used in the prescribed time. If the solution prepared by Ceat is kept for a

long time, the reaction continues and what product comes out of it is not useful for any purpose. Keeping this factor in mind it can never be said

that what Ceat processes is resin, but it is dip solution only ?

A. 34. Dip solution is phenoplast in liquid form. If they do not arrest by putting stabilisers keeping it for a long time without proper care and

preservation, just like any material gets spoiled, this will also get spoiled.

Mr. Talyarkhan submitted, therefore, that without the addition of stabilisers the solution cannot be preserved and it has no life as such. He,

therefore, submitted that this dip solution is not marketable at all. He then drew my attention to what is said by the appellate Collector in this behalf

and the relevant is as follows :

Let us now examine the product in question. It is stated that dip solution is prepared in two stages. In the first stage, all chemicals in requisite

quantities except latices are mixed together under controlled conditions of temperature, inter alia so as to ensure that the temperature thereof do

not rise above 24 to 27 degrees centigrade. This solution after reacting for specific period (4 to 6 hours) is then added to a requisite quantity of

latex or latices kept at ambient temperature. This final mixure of the dip solution then become ready for processing and is to be consumed within a

few hours, as thereafter it becomes unsable. The Dy. Chief Chemist at the time of his cross examination deposed that dip solution can be kept for

long by addition of stabilisers etc. and since they (appellants) do not want at keep dip solution they immediately take it to the process and he also

admits that the appellants do not add any stabilisers, while replying to questions 17 & 18. Thus it is seen that the product as manufactured by the

appellants cannot be brought to the market. Therefore I agree with the appellants'' contention that the dip solution is not goods within the meaning

of Section 3 of the Central Excises and Salt Act, 1944, as judicially interpreted by the Courts. It is merely an in process material for use in the

manufacture of types. Since dip solution is not goods it is not liable to excise duty under any of the T.I. mentioned in the first schedule to the

Central Excises and Salt Act, 1944 much less under T.I. 15A. Dip solution is not known in the market as resin. In fact it is a solution of resins and

other substances. Dy. Chief Chemist had described the products the same is in the form of pala brown coloured liquid. It is an aqueous dispersion

viz. of reaction of products of vinyl pyridine latex, resorcinol and formaldehyde. It gives tack free coating. At the time of his cross examination, he

further elaborated that the appellants were first preparing resorcinol and formaldehyde resin in aqueous solution, which is then mixed with rubber

latex and the resultant product is known as dip solution. Thus it is not that the resin is in liquid form, but solution of resin which according to the

Delhi High Court''s Judgment in the case of India Plastics & Chemicals Pvt. Ltd. 1981 ELT 108 (DEL) cannot be excisable under T.I. 15A. Court

also held that the resin in item 15A refers to the resin as fully manufactured and not to any solution of resin. Thus, in any case dip solution is not

liable to excise duty under T.I. 15A.

8. Mr. Talyarkhan also relied upon the case of Indian Plastics & Chemicals Pvt. Ltd. v. Union of India & others, reported in 1981 E.L.T. 108

(Del.), which is the case decided by the Delhi High Court. In this case the Delhi High Court considered the question as to whether the product, in

that case, can be regarded as artificial or synthetic resin in liquid from after taking note of the fact that item No. 15A refers to all types of artificial

and synthetic resins. The Court said as follows :

To my mind this product cannot be regarded as artificial or synthetic resin in liquid form. It is, at best a solution of resin which is not covered by

aforesaid entry. Reference in this behalf may also usefully be made to the instructions which have been issued by the Central Board of Customs

and Excise. In the said instructions it has been inter alia stated as follows :-

Solution of artificial or synthetic resin in volatile organic solvent, are excluded from the scope of this item, if and when the weight of SUCH

SOLVENT EXCEEDS 50 per cent of the weight of the solution.

In other cases the duty should be levied on the actual weight of the resin contained in the solution and not on the total weight of the solution.

The aforesaid instructions, refer to the solutions, in organic solvent. The important point, however, is that it is recognised that where the solvent

exceeds 50 per cent of the weight of the solution then such product cannot be regarded as being covered by item No. 15A. In the same

instructions it is also stated as follows :-

When the solvent is other than volatile organic one, if the weight and the volume of the resin or basic plastic material can be determined, than the

quantity used attracts duty; if not, duty would be payable on the total weight and volume of the solution, irrespective of weight of solvent added.

The aforesaid shows two things. Firstly, "resin" in item 15-A refers to the resin as fully manufactured and not any "solution of the resin". Secondly,

if more than 50 per cent weight is that of solvent then the product cannot be regarded as "resin" at all. There may be force in the contention on

behalf of the respondent that these instructions are not binding. But these instructions the Government has, to my mind, sought to explain the

meaning of the aforesaid Item No. 15-A.

9. In any event, for the purpose of showing that there can be no excise duty as the product is not marketable at all, Mr. Talyarkhan relied upon a

recent case of the Supreme Court in the case of Union Carbide India Limited Vs. Union of India (UOI) and Others, . That was a case where the

Union Carbide India Ltd., which is carrying on a business of manufacture and sale of flashlights (torches), dry cell batteries, chemicals and plastics,

were also purchasing aluminium slugs from the manufacturers of aluminium in India and were producing aluminium cans or torch bodies by a

process of extrusion. The department contended that aluminium cans were liable for excise duty under item No. 27(c) of the Tariff. The company

contended that aluminium cans were neither sold nor were capable of being sold in the market and, therefore could not be described as the goods

for the purpose of Central Excises and Salt Act. It was also asserted that the preparation of aluminium cans out of aluminium slugs did not amount

to manufacture, and that aluminium cans were merely an intermediate product in the manufacture of flashlights. These contentions did not find

favour with the excise authorities. But the Supreme Court upheld these contentions. I may mention that while deciding this particular case, the

Supreme Court referred to two earlier cases viz. one, the case of Union of India v. Delhi Cloth & General Mills 1963 Supp. 1 S.C.R. 586 : 1977

ELT (199) (SC), and the other, the case of South Bihar Sugar Mills Ltd., etc. v. Union of India & others 1978 E.L.T. 336 (SC). The relevant

observations of the Supreme Court at page 172 are as follows :

The question here is whether the aluminium cans manufactured by the appellant are capable of sale to a consumer. It appears on the facts before

us that there are only two manufacturers of flashlights in India, and appellant being one of them. It appears also that the aluminium cans prepared

by the appellant are employed entirely by it in the manufacture of flashlights and are not sold as aluminium cans in the market. The record discloses

that the aluminium cans, at the point at which excise duty has been levied, exist in a crude and elementary form incapable of being employed at the

stage as a component in a flashlight. The cans have sharp uneven edges and in order to use them as a component in making flashlight cases the

cans have to undergo various processes such as trimming, threading and rewarding. After the cans are trimmed, threaded and redrawn they are

reeded, beaded and anodised or painted. It is at that point only that they become a distinct and complete component, capable of being used as a

flashlight case for housing battery cells and having a bulb fitted to the case. We find it difficult to believe that the elementary and unfinished form in

which they exist immediately after extrusion suffices to attract a market. The appellant has averred in affidavit that aluminium cans in that form are

unknown in the market. No satisfactory material to the contrary has been placed by the respondents before us. Reference has been made by the

respondents to the instance when aluminium cans were ordered by the appellant from Messrs. Krupp Group of Industries. This took place,

however, in 1966 as a solitary instance, and what happened was that aluminium slugs were provided by the appellant to Messrs. Krupp Group of

Industries for extrusion into aluminium cans. The facts show that the transaction was a works contract and nothing more. Apparently, the appellant

made use of the requisite machinery owned by that firm for extruding aluminium cans. Not a single instance has been provided by the respondents

demonstrating that such aluminium cans have a market. The record discloses that whatever aluminium cans are produced by the appellant are

subsequently developed by it into a completed and perfected component for being employed as flashlight cases."".

10. In the present case, it is clear that the dip solution in the condition and as it is found, in the petitioner-company, is not saleable at all. There is no

market for such a solution. In any event, no satisfactory evidence has been placed, at any stage, to show that such an item attracts a market. The

material on the other hand clearly shows that the solution is manufactured and used by the petitioner alone and, therefore, in my view, this case

must directly apply to the facts of the present case. If that is so, the petitioner must succeed.

11. However, the department think otherwise, Mr. Pochkhanwalla, appearing for the department, firstly relied on the definition and the technical

meaning of this dip solution as given in various text books and encyclopaedia of chemical technology. The relevant portions from the various books

are as under :

Rubber Technology and Manufacture (By C. M. Blow And C. Hepburn, at pages 333 and 334) (IInd Edition.)

One of the earliest systems for bonding rayon was based on resorcinol-formaldehyde resin and natural rubber latex, but the material suffered from

a limited pot life. Butadiene-styrene and vinyl pyridine copolymer latices, in admixture with resorcinol-formaldehyde, followed. A later

development was isocyanate adhesive. A modification of the latter was the formation of adducts, which were water soluble for easier application.

With combinations of these systems, the range of fibres available can be pre-treated so that they will adhere to any rubber.

Encyclopaedia of Chemical Technology (By Kirk-Othmer, at page 464) IIIrd Edition.

The cord (qv) is normally first treated with rubber latex to improve adhesion to the vulcanised rubber. The latex dip solution often contains

additives to further improve adhesion. Resorcinol-formaldehyde resins are commonly used but amino resins are also effective. Both urea and

melamine resins are described in the patent literature but melamine resins are preferred.

Encyclopaedia Britannica (Volume VIII. At page 526) XVth Edition.

Resorcinol, or m-DIHYDROXYBENZENE, molecular formula C6 H4 (OH)2, a phenolic compound used in the manufacture of resins, plastics,

dyes, medicine, and numerous other organic chemical compounds. It is produced in large quantities by sulfonating benzene with fuming sulphuric

acid and fusing the resulting benzene disulphonic acid with caustic soda. The activating action of the two hydroxyl (OH) groups makes the

compound highly susceptible to substitution reactions. Reaction with formaldehyde produces resins used extensively as predips before

impregnating rayon and nylon with rubber.

On the basis of these definitions Mr. Pochkhanwalla pointed out that this item can be termed as resin and, therefore, if it is so, the same comes

under item 15A of the Tariff.

12. Mr. Pochkhanwalla has also drawn my attention to two judgments, one of the Bombay High Court and the other of the Supreme Court. The

first is the case of M.R.F. Limited Vs. Union of India and others, . He referred to this judgment to point out, what is important is that a particular

item is manufactured by the company and that is sufficient, provided the said item comes under any of the Tariff items. In this case the question

involved was as to whether rubberised tyre cord warp sheets can be considered as an item which would be liable for excise duty. By referring to

certain observations in this particular case Mr. Pochkhanwalla pointed out that marketability is not the test but the test is whether the manufacturer

has manufactured a particular item, and even if the same is not put in the market that would not make any difference to the chargeability of the

substance to excise duty if it is covered by an item in schedule 1 of the Act. I am afraid that these observations may not apply to the present case

inasmuch as in para 13 of the said judgment the Court had come to the conclusion that the material was saleable. If that is so, this case can easily

be distinguished from the case before me.

13. The other case which is of the Supreme Court is the case of S. B. Sugar Mills Ltd. v. Union of India, reported in 1978 E.L.T. (336). The

relevant observations are in para 14 of the judgment. The question involved in this case was one relating to what is known as Kiln gas. However, in

my view, I need not deal with this authority at all, inasmuch as the Supreme Court while deciding the case of Union Carbide India Ltd., referred to

above, had taken into account this very case and, thereafter, laid down the proposition that for the purpose of chargeability the goods must be as

to have a market or must be saleable.

14. Mr. Pochkhanwalla has also relied upon a case decided by the CEGAT viz. the case of Collector v. Jay Enterprises and 5 others, reported in

1987 (29) E.L.T. 288 (Tri). This is a case where the question was one relating to manufacture of resin. The judgment deals with the details of the

product and points out that there are various stages in the manufacture. They are set out in para 8 of the judgment. After setting out these various

stages the Tribunal goes to observe that in the case of resins there are so many varieties and these have wide-ranging shelf lives ranging from a few

days to a couple of months or even more. The Tribunal further observes that the product has a short shelf life and that it has been conceded by the

learned advocate that it can be kept for as long as 15 days. On the basis of this the Tribunal observes that at that stage the material could be sold

to a consumer or a buyer. The Tribunal of course, has negatived the contention of the manufacturer that the product manufactured by the company

should be marketable. This case again can be distinguished on two courts. Firstly, there is a concession by advocate of the manufacturers that the

particular product could be kept for about 15 days and that it could be sold to the consumer or a buyer if they required the same. Secondly, to the

proposition that whether the product is marketed or sold would not make any difference, appears to be in contradiction to what the Supreme

Court has stated. If that is so, this approach of the Tribunal cannot be a guiding factor for the purpose of deciding the matter which is before me.

15. Mr. Talyarkhan has laid great emphasis on the fact that the evidence of the Deputy Chief Chemist itself shows that without the addition of the

stabilisers, this particular solution has no life at all and it gets spoiled. There is no other material before me to hold otherwise. If that is so, in my

view, this item without any stability whatsoever has no shelf life at all, and therefore, the material would be spoiled within a short time and,

therefore, it cannot be considered as an item which would come under item No. 15A(1). In any event, it is clear that this item is not marketable at

all and if that is so having regard to the judgment of the Supreme Court, the same cannot attract any charge of excise under the Act.

16. In the result, the petitioner must succeed I, therefore, pass the following order :

17. Rule is made absolute in terms of prayer "b". However, in the circumstances of the case, there would be no order as to costs.