

(1981) 09 BOM CK 0085

Bombay High Court

Case No: Misc. Petition No. 25 of 1978

Bombay Wire Ropes Ltd. and  
another

APPELLANT

Vs

Union of India and another

RESPONDENT

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**Date of Decision:** Sept. 16, 1981**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (1989) 24 ECR 508 : (1981) 8 ELT 727**Hon'ble Judges:** M.L. Pendse, J**Bench:** Single Bench

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**Judgement**

1. By this petition filed under Article 226 of the Constitution of India, the petitioners are challenging the legality of the order dated October 24, 1977 passed by Shri D. G. Ahire, Assistant Collector of Central Excise, Bombay Division XIII, directing that the two modified Polyvinyl Acetate Synthetic Resin Predicts viz. Surfamol S-5 and Surfamol S-6 should be classified as Synthetic Resins falling under Tariff item 15A(1)(ii) and charged to duty at 40% ad valorem with effect from June 18, 1977.

2. The petitioners filed with the Superintendent, I/C Range No. V, Thane, a classification list in respect of these two items claiming that the products should be covered by Tariff Item 68 as accepted by the Department prior to June 18, 1977. The Assistant Collector proceeded to charge the duty on the basis of Tariff Item No. 15-A(1)(ii) in view of the Budgetary changes vide Finance Bill No. 2 of 1977 effective from June 18, 1977. The Assistant Collector felt that the revision of Tariff Entry No. 15-A widens the definition of Synthetic Resin to cover all modified forms of Synthetic Resins.

3. The petitioners filed this petition in this Court on January 19, 1978 and the petition was duly admitted and interim orders were passed on petitioners" furnishing Bank guarantee. The interim order was passed in terms of the Minutes filed by the parties

on March 13, 1978. The petitioners have furnished several Bank guarantees in pursuance of this order and all those guarantees are still outstanding. The petitioners, during the tendency of this petition, have filed an appeal against the impugned order before the Appellate Collector of Central Excise and Customs, and the appeal was dismissed by an order dated September 9, 1979 on the ground that the petition is pending in the High Court and the orders of the High Court would supersede whatever order the Appellate Authority would pass in the appeal. Shri Hidayatullah applies for amendment of the petition and desires to challenge the order passed by the Appellate Authority on September 9, 1979. As the appellate order was passed during the pendency of the petition, I find no difficulty in granting the amendment as sought by Shri Hidayatullah. Shri Hidayatullah undertakes that the requisite amendment would be carried out within two days.

4. Shri Hidayatullah, appearing in support of the petition, submitted that the impugned order was passed by Shri Ahire, the Assistant Collector in pursuance of the directive issued by the office of the Collector, Central Excise, Bombay. The learned counsel invited my attention to a circular issued by the office of the Collectorate in pursuance of the letter dated August 30, 1977, received from the Central Board of Excise and Customs, New Delhi. This letter was addressed to all Collectors and all Appellate and Deputy Collectors of Central Excise. By the said circular the officers were directed to classify the artificial synthetic resins and plastic materials, and paragraph 6 of the letter requires to be quoted to appreciate the grievance of the petitioners.

"The position as indicated in this letter may be brought to the notice of all concerned so that the pending cases are decided accordingly without any delay. The lower formation should also be suitably advised to examine all past cases where the modified forms of resin were held to fall outside the purview of item 15-A(1)(ii) in terms of the tariff ruling No. 3 of 1965 referred to above so that the appropriate duty on such products is correctly levied and collected on and from 18-6-1977."

The plain reading of this paragraph establishes that a directive was given to all the officers of the Central Excise to pass orders as per the directions contained in the letter. It is really unfortunate that such circulars are issued to the officers who are conferred with the jurisdiction to decide the issue of classification and it is equally unfortunate that such circulars are taken into consideration by the officers while discharging their quasi-judicial duties. Shri Hidayatullah submits that this circular issued on September 12, 1977 was taken into account by the Assistant Collector while passing the impugned order on October 24, 1977. Shri Dhanuka made a faint attempt to urge that the Assistant Collector has made no reference in the impugned order to the circular received by him, and therefore, it is probable that the Assistant Collector had decided the matter independently of the circular. Unfortunately for Shri Dhanuka, Shri Ahire has not filed his return in answer to the complaint made by the petitioner, but one Shri Vishwanath Sitaram Thatte has filed a return and in

paragraph 13 of the said return it is claimed that the circular was not intended to be directive laying down the law for classification of an article as suggested by the petitioner and the officer concerned has got absolute discretion to decide the matter on merits. The question is not whether the officer has got absolute discretion but whether the officer was impressed by the directive issued under the circular. From the proximity of the date of the circular and the order, it is probable that the officer was carried away by the directive contained in the circular. In these circumstances, it is not possible to uphold the impugned order. It has been repeatedly pointed out that the Assistant Collector is exercising quasi-judicial powers and he should not be guided in exercise of his jurisdiction by directives issued by his superiors or by any other extraneous considerations.

5. The Appellate authority has not bothered to take into consideration any of these aspects and has merely disposed of the appeal by observing that whatever order is passed, it would be superseded by the order of the High Court. The mere fact that the writ petition is pending in the High Court is no answer to dispose of the appeal without application of mind. The Appellate authority was clearly in error in not applying its mind to the grievance of the petitioner. In these circumstances, I am constrained to set aside the impugned order passed by the Assistant Collector and the order passed by the Appellate Collector and to remit the proceedings back to the Assistant Collector of Central Excise for a fresh disposal. The Assistant Collector would permit the petitioner to produce all materials which they desire to produce in support of their claim including the material which was produced before the Appellate authority. The Assistant Collector shall dispose of the proceedings within a period of six months from the date of receipt of the writ in his office. The Assistant Collector, while deciding the matter, would keep out of his mind any of the circulars or directives issued by his superiors or any of the observations made by the Appellate authority while disposing of the appeal.

6. Shri Dhanuka submits that the Bank guarantees furnished by the petitioner should remain in force for a period of six months. Shri Hidayatullah has no objection to that course.

7. Accordingly, the petition succeeds and the order dated October 24, 1977 passed by the Assistant Collector of Central Excise, Bombay Division, and the order dated September 9, 1979 passed by the Appellate Collector, Central Excise and Customs, Bombay, are set aside and the proceedings are remitted back to the Assistant Collector for a fresh disposal in the light of the observations made in the judgment.

8. The Bank guarantees furnished by the petitioner in pursuance of the interim order passed by this Court, would remain in force for a period of six months from to-day. The arrangement as per the Minutes filed by the parties at the time of interim order would continue to remain in force till the disposal of the proceedings by the Assistant Collector.

9. In the circumstances of the case, there will be no order as to costs.