(1981) 09 BOM CK 0087

Bombay High Court

Case No: Misc. Petition No. 474 of 1978

Ravji Industrial Corporation		APPELLANT
	Vs	
Union of India and others		RESPONDENT

Date of Decision: Sept. 11, 1981

Acts Referred:

- Central Excise Rules, 1944 - Rule 8(1)
- Central Excises and Salt Act, 1944 - Section 36(2)

Citation: (1989) 24 ECR 520 : (1981) 8 ELT 734

Hon'ble Judges: M.L. Pendse, J

Bench: Single Bench

Judgement

1. The short question which falls for determination in this petition is whether the corrugated roofing manufactured by the petitioners are a ''sheet'' and, therefore, not entitled to exemption under Notification No. 68 of 1971 dated May 29, 1971.

2. The petitioners are a partnership firm carrying on business in Bombay and are producing articles of fibre glass reinforced polyester. On June 1, 1973, the petitioners addressed a letter to the Central Excise Department informing that the petitioners intend to produce items including corrugated roofing and desired to know whether the items are excisable. The petitioners were informed by letter dated June 2, 1973 that the product intended to be manufactured is excisable under Tariff Item No. 15A(2) but exempted from payment of whole of the duty leviable thereon under Government of India Notification dated May 29, 1971. By letter dated December 5, 1973, the Superintendent, Central Excise, informed the petitioners that the corrugated roofing being a sheet is not entitled to the exemption under the Notification. The Superintendent felt that since the fibre glass corrugated roofing are sheets, the duty payable thereon is 50% ad valorem as provided by Item 15A(2) of the Central Excise Tariff.

3. The petitioners did not accept the claim of the Superintendent and addressed letter dated July 10, 1974 to the Assistant Collector claiming that the classification of the product by the Superintendent was not proper. The Assistant Collector gave hearing to the petitioners and came to the conclusion that the article is a plastic material and is manufactured by aid of polyester resin reinforced by fibre glass and is obviously a plastic sheet and would be covered by Tariff Item 15A(2) of the Central Excise Schedule. The decision of the Assistant Collector was recorded on October 30, 1974. The petitioners carried an appeal before that Appellate Collector of Central Excise and that appeal was allowed by order dated June 11, 1975. The relevant portion of the order runs into a couple of lines and could be conveniently quoted :-

"I have gone through the records of the case and considered all arguments raised by the appellants. Keeping in view the process of manufacture, since the product is directly moulded from resins, which has got profiles and it cannot be re-shaped, I order that the goods are exempted under Notification No. 68/71. I, therefore, allow the appeal and set aside the order passed by the Assistant Collector. Consequential relief shall be granted to the appellants."

4. The Government of India served a show cause notice dated May 21, 1976 upon the petitioners for the purpose of reviewing the order passed by the Appellate Collector. The Central Government decided to exercise the powers u/s 36(2) of the Central Excise Act as it was felt that the Appellate Collector had completely missed the relevant factors and has proceeded to pass an erroneous-order. The show cause notice, inter alia, mentions that the dutiability of the article falling under the Tariff Item is not determined on the basis of particular process of manufacture and the only thing which requires determination is whether the product is an article of plastic material. The Central Government by its order dated August 29, 1977 set aside the order of the Appellate Collector and restored that passed by the Assistant Collector. The Central Government noted that the fibre glass reinforced polyester corrugated roofing manufactured by the petitioners are nothing but sheets and attract duty under Item 15A(2) of the Central Excise Tariff. That decision of the Central Government is under challenge in this petition filed under Article 226 of the Constitution of India.

5. Shri Korade, the learned counsel appearing in support of the petition, has raised three or four submissions to challenge the legality of the order passed by the Government of India holding that the corrugated roofing manufactured by the petitioners are liable to duty under item 15A(2). Item 15A deals with plastic and Item 15A(2) reads as under :-

''Item No.	Tariff Description	Rate of duty
15A(2)	Articles made of plastics, all sorts, including tubes, rods, sheets, foils,	Fifty per cent ad valorem.

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          sticks, other rectangular or profile
          shapes, whether laminated or not, and
          whether rigid or flexible, including
          layflat tubings, and polyvinyl chloride
          sheets, not otherwise specified.
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).''
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In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government published exemption Notification on May 29, 1971 and relevant portion reads as under :-

"Notification No. 68/71-CE.

Articles of plastics with certain exceptions are exempt from duty.

68/71-CE, dt. 29-5-71.

In exercise of the powers conferred by rule 8(1) of the Central Excise Rules, 1944, the Central Government hereby exempts articles made of plastics, all sorts, falling under sub-item (2) of Item No. 15A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), except -

(i) rigid plastic boards, sheetings, sheets and films, whether laminated or not."

The question which requires answer is whether the corrugated roofing manufactured by the petitioners are sheets and excluded from the exemption Notification. The first submission of Shri Korade is that the expression "sheet" must be construed with reference to Item 15A(2). There cannot be any dispute with this proposition. The learned counsel also submitted that the burden to establish that the article manufactured by the petitioners is liable to duty is on the Department. It was claimed that "sheet" means an article which is flat in nature and the corrugated roofing being not a flat article could not be termed as a sheet. It is not possible to accept this submission of the learned counsel. Item 15A(2) refers to all sorts of articles made of plastic and the latter part of the entry is not an exhaustive one but is merely illustrative as the expression "including" makes it very clear. Shri Korade submits that the exemption Notification excludes all plastic articles except rigid plastic boards, sheeting, sheets and films and all these articles indicate that they are flat in nature. The submission is that if the plastic article is not a flat one but is a corrugated one, it could not be termed as a sheet and duty could be levied. Item 15A(2), while referring to the tubes, rods, sheets, foil, sticks includes other rectangular or profile shapes and provides that other rectangular or profile shapes must be treated as articles of plastic. It is obvious that the Legislature intended to include all articles made of plastic whether of rectangular or profile shapes and it

would not be correct to suggest that expression "other rectangular or profile shapes" must be read as to restrict sheets of rectangular or profile shapes. Shri Korade made a brave attempt to suggest that only those sheets which are of rectangular or profile shapes are covered by item 15A(2) of the Central Excise Tariff. It is impossible to accept this submission. The expression "sheet" is of a wide connotation and it would cover "sheet" whether or rectangular or profile shape or flat or corrugated roofing. The plastic articles which are covered by expression "other rectangular or profile shapes" are those which could not be termed as a sheet but that does not mean that the expression "sheet" is restricted only to rectangular or profile shapes.

6. The second submission of Shri Korade that as the exemption notification refers to articles like rigid plastic boards, sheetings, sheets and films, it must be held that the exemption to sheets is available provided it is not of a flat nature. This submission proceeds on an assumption that the rigid plastic boards, sheetings, sheets and films are articles which are flat in nature. This assumption itself is not warranted by any material on record. It is obvious that the sheets are totally excluded from the advantage of the exemption notification and the expression "sheets" is not restricted only to those which are flat but would cover any kind of sheet in whatever shape it is. The second submission of the learned counsel deserves to be repelled.

7. Shri Korade then submits that the corrugated roofing manufactured by the petitioners are not made only of plastic but are reinforced by the fibre glass. In support of this submission, the learned counsel relied upon the process of manufacture and claimed that the corrugated roofing are manufactured not out of pure plastic but of plastic reinforced by the fibre glass. Shri Korade placed reliance upon the Explanations I and II to Item 15A and claimed that "plastic" means the various artificial or synthetic resins or plastic materials included in sub-Item (1). The submission is that as the corrugated roofing is made of plastic and reinforced by fibre glass, the article could not be termed as an article made of plastic. The submission is without any merit. Merely because the plastic is reinforced by fibre glass, it would not cease to be an article of plastic material.

8. In this connection, Shri Chinai, the learned counsel appearing on behalf of the Department, invited my attention to Paragraph 25.2.5 on page 580 of book on "Plastics materials", Third Edition by J. A. Brydson and especially to the following passage on 582 :

"The largest single outlet for polyester-glass laminates is in sheeting for roofing and building insulation and accounts for about one-third of the resin produced."

The learned counsel also relied on the contents appearing under the heading "Industrial Plastics" in the Encyclopaedia Britannica, 15th Edition. The relevant portion is on page 523 and the process set out on page 524 under the heading "Laminates, reinforced plastics, and composites" is the one which the petitioners are

carrying out for the manufacture of corrugated roofing. The reliance placed by Shri Chinai on these citations clearly indicates that the corrugated roofing do not cease to be plastic articles merely because it is reinforced with fibre glass. It is obvious that the plastic is reinforced by fibre glass and the manufacture of corrugated roofing from it would continue to be the article of plastic. In my judgment, the view taken by the Assistant Collector and the Government of India is in accordance with the plain reading of the entry and the exemption notification and the challenge to the order is without any basis.

9. Shri Chinai also desired to rely upon several other books and brochures of the plastic manufactures but Shri Korade objected to the production of the material on the ground that it was not relied by the Excise authorities, nor it is set out in the affidavit-in-reply. The learned counsel urged that in view of the decision of the Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, it is not permissible for the Department to sustain the conclusions by reference to the additional material. In view of this submission of Shri Korade, I have not perused the various other books and brochures on which Shri Chinai wanted to rely upon to establish that the corrugated roofing is understood in commercial parlance as plastic sheets. Shri Korade very fairly stated that the petitioners had made no efforts to produce any material either before the Excise authorities or before this Court to establish that in commercial parlance corrugated roofing is not known as plastics sheets. In absence of any material produced on behalf of the petitioners, it is impossible to hold that the orders passed by the Government in exercise of the powers u/s 36(2) of the Central Excise Act suffer from any infirmity. In my judgment, the order is proper and in accordance with the correct reading of Item No. 15A(2) of the Central Excise Tariff and the exemption notification and, therefore, the order under challenge requires no interference.

10. Accordingly, the petition fails and the rule is discharged with costs. It is made clear that the contention of the petitioners that the show cause notice issued by the Department pursuant to the order passed by the Government is barred by law of limitation is not considered in this petition and it is open for the petitioners to raise any such contentions before the concerned authorities.