

Collector of Customs, Bombay

Vs

Bhor Industries Ltd.

Civil Appeals Nos. 392-95 of 1988

(Sabyasachi Mukharji, S. Ranganathan JJ)

20.04.1988

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. These appeals under Section 130-E(b) of the Customs Act, 1962 (hereinafter called the Act) are against the order dated December 15, 1986 passed by the Customs, Excise and Gold (Control) Appellant Tribunal (hereinafter called CEGAT). These appeals are related to a dispute regarding the duty of custom imposed on the respondent. The department had levied duty on the product known as 'Santicizer 429' imported by the respondent. The respondent had contested this duty and filed a claim for the refund. The Assistant Collector of Customs rejected this claim. The Assistant Collector on test found it to be organic compound (ester-type) in form of colourless viscose liquid and as per 7.0.046 should be considered as polymeric plasticiser. The Appellate Collector found that Chapter 38 of the Customs Tariff Act, 1965 was residuary in nature. According to him, if the item was not covered by any other chapter of the Customs Tariff Act, 1975 then it would fall under Chapter 38. The Appellate Collector further found that linear polysters were covered by CCCN 39.01(E). The Appellate Collector held that the impugned goods are formed by the condensation of diabasic acid within dihydric alcohols and were similar to the polycondensation of products of terphthalic acid or adipic acid with ethanediol covered by abovementioned CCCN headings. The Appellate Collector held this CCCN heading corresponds to 39.01/06 of the Customs Tariff Act, 1975. The Appellate Collector upheld the decision of the Assistant Collector. The respondent challenged the aforesaid order of the Appellate Collector before the Tribunal. The Tribunal allowed the appeals relying on the two decisions of the Tribunal one being Bhor Industries Ltd. v. Collector of Customs, Bombay ((1984) 18 ELT 521), and the other Collector of Customs, Bombay v. Bhor Industries Ltd. ((1985) 21 ELT 291) The Tribunal was of the view that the product was classifiable under the heading 38.01/19(6) of the Customs Tariff Act. The decision of the Tribunal was later on followed by the subsequent decision referred to hereinbefore.

2. In Bhor Industries Ltd. v. Collector of Customs, Bombay ((1984) 18 ELT 521), the Tribunal observed that these are ordinarily liquids and, in the rare instances solids as simple high boiling solvents for the polymers. These are neither resins nor do they seem to be plastic materials; on the other hand these are added to resins to impart better flexibility or plastic properties to them. It was further observed that no evidence had been produced before the Tribunal to show that Santicizer was a resin or plastic material as defined in Explanatory Notes to CCCN. It was neither similar to resols or polyisbutylene to attract the mischief of Note 2(c) to Chapter 39 nor a separately defined chemical compound so as to fall within Chapter 28 or 29 of Customs Tariff Act, 1975. Hence, it was classifiable not under heading 39.01/06 as it stood before its amendment in 1978 but under heading 39-01/06 as it stood before its amendment in 1978 but under 38-01/19(6) of the Customs Tariff Act,

1975 as "plasticizer not elsewhere specified."

3. The Tribunal in its decision considered the technical leaflet on the product. Santicizer 429 was described as a medium-high molecular polyester plasticizer made from a glycol reacted with a dibasic acid. Among the properties claimed for the product are good low temperature flexibility, excellent electrical properties, outstanding migration resistance, humidity, stability and resistance to oil and solvent extraction. It is said to be an excellent plasticizer for making oil-resistant high temperature PVC wire and cable compounds. It is also stated to be useful for plasticizing ethylcellulose, nitrocellulose, acrylic caulking compounds and adhesive systems based upon polyvinyl acetate, styrene-butadiene, and acrylic latices. Reference was also made to Kirk-Othmer's "Encycloaedia of Chemical Technology" third edition page 111, where it was observed as follows :

A plasticizer is incorporated in a material to increase its workability flexibility or distensibility. Addition of a plasticizer may lower the melt viscosity, the second-order transition temperature, or the elastic modulus of the plastic. For effectiveness with polymeric materials, a plasticizer needs to be initially mixed with the polymer either by dissolution of the resin in the plasticizer or the plasticizer in the resin, by heat or dissolving both in a common solvent and subsequent evaporation of the solvent. In "Plastics Materials" (fourth edition, page 80), J. A. Brydson refers to plasticizers - ordinarily liquids and in rare instances solids - as simply high boiling solvents for the polymer. The action is explained by saying that plasticizer molecules insert themselves between polymer molecules reducing but not eliminating polymer - contacts and generating additional free volume; also as the some interaction between polymers and plasticizers off-setting the spacing effect; or both.

4. The Tribunal came to the conclusion that plasticizers were not resins; these are added to resins to impart better flexibility or plastic properties to the latter. Nor did they seem to be plastic materials by themselves. The Tribunal found that Santicizer 429 which is admittedly a plasticizer would, therefore, not have fallen for classification under heading 39.01/06 of the Customs Tariff Schedule as it stood prior to its amendment in 1978.

5. The said reasoning was reiterated by the Tribunal in the decision of Collector of Customs, Bombay v. Bhor Industries Ltd. ((1985) 21 ELT 291) There, the Tribunal observed that as per various technical authorities plasticizers are not resins. Rather these are added to resins to impart better flexibility or plastic properties to them. These are not plastic materials by themselves either. Further, goods under reference are not similar to resols or polyisobutylenes. Therefore, their classification under heading 30.01/06 [sic 39.01/06] of the Customs Tariff Act, 1975 prior to and even after its amendment in 1978, should not be applicable. Furthermore, not being separately defined chemical compounds these would also not fall within Chapter 28 or 29 of the Act. Since these are not specified elsewhere, their appropriate classification would be under heading 39.01/19(6) [sic 38.01/19(6)] as "Plasticizers, not elsewhere specified".

6. It is well settled in these matters how a goods is known in the trade and treated in the trade literature is relevant and significant and often decisive factor.

7. In that view of the matter, the Tribunal was right in the view it took. These appeals fail and are accordingly dismissed.

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