

Mahindra Engineering and Chemical Products Ltd.

Vs

Union of India and others

Civil Appeal No. 3251 of 1984

(S. R. Pandian, R. M. Sahai JJ)

21.01.1992

JUDGEMENT

R. M. SAHAI, J.:-

1. The question of law that arises for consideration in this appeal directed against order of the Customs, Excise and Gold (Control) Tribunal (hereinafter referred to as 'CEGAT'), New Delhi, is if the tubular shaped arc chamber housings manufactured by the appellants from glass fabrics which they purchased from manufacturers was exigible to duty under tariff Item No. 2F(4) or under residuary Item No. 68 of the General Excise and Tariff Act.

2. Manner of manufacture of arc chamber housing was not in dispute nor there was any dispute that it was manufactured from glass fabric purchased from open market in which glass fibre predominated. The issue was whether the arc chamber manufactured from glass fibre, a product of intermediate stage and not directly from mineral fibre or yarn was exigible to duty under item 22F(4) which read as under:

"22.F. Mineral fibres and yarn and manufacturers therefrom, in or in relation to the manufacturer of which any process is ordinarily carried on with the aid of power, the following, namely;

(1) Glass fibres and yarn including glass tissues and glass wool;

(2) asbestos fibre and yarn;

(3) any other mineral fibre or yarn, whether continuous or otherwise, such as, slag wool and rock wool;

(4) Other manufactures in which mineral fibres or yarn or both predominate or predominates in weight.

Explanation.- This item does not include asbestos cement products."

The Assistant Collector held that the goods were covered under tariff item 22F(4) as the percentage of the mineral fibre yarn was predominant in the weight. In appeal it was held that the words "manufactured therefrom" in tariff item No. 22F(4) would include not only first manufacture of mineral fibre and yarn but also subsequent manufacture wherein mineral fibre or yarn was used. The order was affirmed by the Tribunal on construction of the expression "manufacture therefrom" which were capable of a simple and straightway meaning that the goods should be manufactured

from mineral fibre and yarn. The CEGAT held that glass fabric was no doubt an intermediate stage between glass arc housing and glass fibre or yarn yet the goods were exigible to duty under 22F(4), as the arc housing chamber did not cease to be manufacture of glass fibre/yarn merely because the fibre/ yarn was first woven into glass fabric. It rejected the claim of appellant as the construction suggested would result in reading the word directly in item No. 22F(4). It was found that if glass fibres/ yarn were to be woven into fabrics before they could be used in the manufacture of the housing, the housing would not cease to be a manufacture of glass fibres/yarn. Subsequently a five Judge Bench of the CEGAT did not agree with the interpretation put by the Tribunal in this case, and held that the entry applied to only those products the manufacture or attendant function of which was to do something with mineral fibre and yarn. It did not apply to a product in which only mineral fibre or yarn was used.

3. The entry is in two parts, one, descriptive and the other explanatory. Both are to be read together to bring out the scope and extent of its applicability fully. The first declares the items which are exigible to duty. But restricts it to only those in relation to the manufacture of which any process is ordinarily carried on with the aid of power. Having thus specified the items and the condition on which it would be covered in the entry it proceeds to amplify it in the second part by using the words "following namely" thus explaining the items that were intended to be covered in this entry. Use of expressions 'namely', or 'that is to say' followed by description of goods is usually exhaustive unless there are strong indications to the contrary. Language of serial No. (4) is plain and simple. It intends to clarify the expression 'manufacture therefrom' by expanding it to include in its ambit even those manufactures in which fibre or yarn predominated in weight. But it did not go beyond it and purported to include manufactures out of manufacture of a commodity in which mineral fibre or yarn predominated. The entry was added in 1980. That gave an occasion for the learned counsel for Union of India to urge that it was intended to evade payment of duty for widening and expanding the ambit of entry. In our opinion the item cannot be construed in the manner suggested. The entry was widened but to the extent indicated above. Any other construction would result in altering the principal clause. That would be contrary to the scheme of the entry and principle of construction. Its only effect was to include even those manufactures in which mineral fibre or yarn or both predominate. It could not be extended to those goods which were manufactured out of certain commodity in which mineral fibre or yarn had been predominantly used. The word 'other manufacture' has to be read in the same sense as 'manufacture therefrom' used in the main part. The only difference is that the scope has been widened to include not only those goods which were manufactured from mineral or yarn but even to those in which ,they predominate. The construction as suggested by the learned counsel for Union of India shall not only change the nature of entry but it shall result in extending to manufactures at any stage. In Geep Flashlight Industries v. Union of India, (1986) 6 ECR 430 (SC), the entry of 'articles of plastic' was construed to mean as article made wholly of commodity commonly known as plastic to avoid any artificial reading. The word 'wholly' was read in the entry to render it workable. Thus glass fabric manufactured out of mineral fibre is exigible to duty under item No. (4) but arc chamber housing manufactured from glass fabric cannot be placed at par with glass fabric and cannot be considered as 'other manufacture' of glass fibre or yarn.

4. For reasons stated above this appeal succeeds and is allowed. The orders of Tribunal, Collector and Assistant Collector are set aside. The arc chamber housing manufactured out of glass fabric are held to be exigible to duty during the relevant period under item No. 68. The appellant shall be entitled to its costs. Appeal allowed.

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