

Inarco Limited

Vs

Collector of Central Excise

Civil Appeal No. 2794 of 1984

(B. P. Bharucha, K. Venkataswami JJ)

20.09.1996

JUDGMENT

BHARUCHA, J. –

1. This appeal against the judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal, concerns the classification of 'aprons' and 'cots'.

2. Aprons and cots are manufacture by the appellants. The are components of textile machinery. Synthetic rubber is the raw material for their manufacture and it is subjected to a series of processes, including extrusion and vulcanisation. At one stage of manufacturing process unhardened tubes emerge. These are cut to small lengths ordered by the appellants' customers, and are aprons and cots.

3. The appellants paid excise duty on aprons and cots under Tariff Item 16-A. On 29-8-1967, and exemption notification was issued, whose benefit the appellants claimed. Consequently, the appellants paid no excise duty on aprons and cots until the year 1980. On 24-9-1980, a notice was issued to the appellants which required them to show cause why aprons and cots should not be classified under the residuary Tariff Item 68. The appellants' contention to the contrary was accepted. On 18-1-1982, the Collector of Central Excise issued to the appellants a notice under Section 35-A(2) of the Central Excises and Salt Act, 1944, requiring them to show cause why the order of the Assistant Collector should not be reviewed and set aside. The appellants' contention that aprons and cots were classifiable under Item 16-A was rejected and they were classified under Item 68. The appellants carried the matter in appeal to the Tribunal. The Tribunal affirmed the order of the Collector, but restricted the demand to the date of his show-cause notice.

4. Item 16-A reads thus :

#-----	-----Item	Tariff	Description	Rate of Duty	No.-----
-----	(1)	(2)	(3)	-----	-----
-----	16-A.	Rubber	products, the following namely :	(1) Latex foam sponge. Fifty-five per cent	
-----	ad	valorem	Explanation. - This sub-item includes articles made of latex foamsponge. (2) Plates,		
-----	whether	combined	with any textile materials or otherwise. (3) Piping and tubing of unhardened		
-----	Twenty-five	per cent	vulcanised rubber ad valorem (4) Transmission, conveyor or elevator belts or		
-----	belting	of	vulcanised rubber."-----	Item 68,	so far as it
-----	is	relevant,	reads thus :-----	Item	Description of
-----	Goods	Rate of	DutyNo.-----	68.	All other goods, not

elsewhere specified, One per cent. manufactured in a factory but excluding -----  
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The relevant portion of the said exemption notification reads thus :

"In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts piping and tubing of unhardened vulcanised rubber, falling under sub-item (3) of Item 16-A and specified in column (2) of the Table below from the whole of the duty of excise leviable thereon :

# TABLE-----Serial DescriptionNo.-----  
-----3. Piping and tubing designed to be or converted in the factory of its production into component parts of machinery articles (including typewriters) provided such component parts do not perform the function of conveying air, gas or liquid.-----  
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5. Mr A.M. Setalvad, learned counsel for the appellants, submitted that aprons and cots were classifiable under Item 16-A because they were "piping and tubing of unhardened vulcanised rubber". Being specifically covered under this item, the residuary Item 68 had no application.

6. Reliance was placed upon the judgment of this Court in Bharat Forge & Press Industries (P) Ltd. v. CEE [(1990) 1 SCC 532 : 1990 SCC (Tax) 166 : (1990) 45 ELT 525], where the appellants made pipe fittings such as elbows and bends by cutting steel pipes and tubes into different sizes, giving them shape and turning them into pipe fitting by heating in a furnace, hammering and pressing. They claimed that these pipe fittings fell within Item 26-AA(iv) of the Tariff, which read as follows :

"Pipes and tubes (including blanks therefor) all sorts, whether rolled, forged, spun, cast, drawn, annealed, welded or extruded."

This Court held that unless the Excise authorities could establish that the pipe fittings could by no conceivable process of reasoning be brought under any of the tariff items, resort could not be had to the residuary item. Item 26-AA(iv) encompassed all sorts of pipes and tubes, and it was of no consequence how they were manufactured. In order to achieve fully the purpose for which the pipes and tubes were manufactured, it was necessary to manufacture smaller pieces of pipes and tubes and also to manufacture them in such a shape that they might be able to conduct liquids and gases, passing them through and across angles, turnings, corners and curves or regulating their flow in the manner required. Smaller pieces of pipes and tubes differently shaped were manufactured for this purpose. They were merely intended as accessories or supplements to the larger pipes and tubes. There was no change in their basic physical properties or their end use. There was no reason why they could not be described as pipes and tubes. In the circumstances, it was difficult to say that pipe fittings, though they might have a distinctive name in the market, were not pipes and tubes. The use of the words "all sorts" and the reference to the various processes by which the excisable item could be manufactured were comprehensive enough to sweep within their fold these goods.

7. Mr Setalvad submitted that even if it be found that aprons and cots were correctly classifiable under Item 68, the benefit of the said exemption notification should be extended to them because they were "piping and tubing designed to be or converted in the factory of production into

component parts of machinery" and they did not perform the function of conveying air, gas or liquids.

8. In that behalf our attention was drawn to the judgment of this Court in *Jain Engineering Co. v. Collector of Customs* [(1987) 4 SCC 492 : (1987) 32 ELT 3]. This was a case relating to rod bushes and camshaft bushes and the question was whether the appellants, who made them, were entitled to the benefit of an exemption notification. The notification provided that articles specified in column (2) of the Table thereof and falling under heading 84.06 were exempt from payment of a certain portion of customs duty. Column (2) of the Table not only mentioned internal combustion piston engines, undoubtedly forming the only subject-matter of heading 84.06, but it also mentioned other parts thereof. Heading 84.06 did not refer to the parts of such engines. The non-mention had given rise to the controversy. This Court said that it was clear that the exemption notification not only intended to grant exemption to internal combustion piston engines but also to parts thereof. When the intention was clear and manifest, it was unreasonable to take a narrow view of the notification and not to extend its benefit to parts of the engines referred to in heading 84.06. To accept the contention of the Excise authorities that since heading 84.06 did not mention the parts, the notification was inapplicable to the parts would be to amend the notification, which the Court would not do.

9. Mr J. Vellapally, learned counsel for the Excise authorities, stressed the phraseology of Item 16-A(3) and submitted that it referred to large lengths of piping and tubing of unhardened vulcanised rubber and not to small parts thereof. He drew attention to the fact that where the intention was to refer to smaller parts, the item had specifically done so; thus, in sub-item (4) "Transmission, Conveyor or elevator belts or belting ..." were spoken of. Mr Vellapally drew attention in this behalf to judgment of this Court in *Collector of Customs v. K. Mohan & Co. Exports* [1989 Supp (2) SCC 337 : (1989) 43 ELT 811], where the contention on behalf of the assessee that film rolls of indefinite length and not in the form of individual cut pieces were more appropriately described as 'sheetings', not 'sheets', was accepted. Mr Vellapally submitted that under the terms of the said exemption notification piping and tubing covered by Item 16-A was exempt if it was designed to be used or converted in the factory of its production into component parts of machinery. The intention, in this submission, was to levy excise duty on the machinery and exempt from excise duty the piping and tubing made into component parts of machinery. Aprons and cots did not fall under Item 16-A. They were also not eligible to the exemption given by the said exemption notification.

10. In our view, aprons and cots being cut pieces of long lengths of tubes or pipes are outside the scope of Item 16-A; "piping and tubing", as used therein, refers to lengths of (sic) pipes or tubes.

11. The judgment in the case of *Bharat Forge & Press Industries (P) Ltd.* [(1990) 1 SCC 532 : 1990 SCC (Tax) 166 : (1990) 45 ELT 525] dealt with an entry which in terms referred to "all sorts" of pipes and tubes, by whatever means manufactured. It was, therefore, that this Court held that the item was comprehensive enough to take within its fold the pipe fittings made by the assessee.

12. The said exemption notification applies to piping and tubing of unhardened vulcanised rubber that falls under sub-item (3) of Item 16-A. The sweep of the exemption notification cannot be increased by the Court to cover goods that do not fall under Item 16-A.

13. The judgment in the case of *Jain Engineering Co.* [(1987) 4 SCC 492 : (1987) 32 ELT 3] dealt with an exemption notification that gave to articles mentioned in column (2) of the Table thereof and falling under heading 84.06 exemption from payment of a certain portion of customs duty.

Column (2) of the Table mentioned internal combustion piston engines and parts thereof. Heading 84.06, however, referred to internal combustion piston engines but not to parts thereof. The Court declined to accept the contention of authorities that the benefit of the exemption notification could not be given to parts of internal combustion piston engines because parts were not covered by heading 84.06. To do so, it said, would be to amend the exemption notification, which the Court would not do.

14. The Court in the case of Jain Engineering Co. [(1987) 4 SCC 492 : (1987) 32 ELT 3] read the exemption notification as it stood. We also read the said exemption notification as it stands and may not amend it.

15. The appeal is dismissed with costs.