

Collector of Central Excise

Vs

M/s Wood Polymers Ltd.etc.

(S. C. Agrawal, D. P. Wadhwa JJ)

17.12.1997

JUDGMENT

S.C.AGRAWAL, J.:

1. These appeals by the Revenue raise a common question, namely, whether paper based laminated Sheets/Boards are classifiable for the purpose of excise duty under Heading 3920.21 of the Schedule to the Central Excise Tariff Act 1985 [hereinafter referred to as "the Act"] as claimed by the Revenue or under Heading 4818.90 of the said Schedule till February 28, 1988 and under Heading 4823.90 of the said Schedule on and after March 1, 1988 as found by the Customs Excise & Gold [Control] Appellate Tribunal [hereinafter referred to as "the Tribunal"].

2. M/s. Wood Polymers Ltd., the respondent in Civil Appeals Nos. 1852-53 of 1991, manufactures (I) paper based decorative laminated sheets, (II) cotton fabric based laminates and (III) paper based insulators electrical grade. The said products were classified by the Assistant Collector of Central Excise under Chapter 39 sub-Heading 3920.21. The said classification was approved in appeal by the Collector of Central Excise (Appeals). On further appeal by the assessee, the Tribunal, by its judgment dated March 6, 1990, held that paper based decorative laminated sheets/boards are classifiable under sub-heading 4818.90 till February 28, 1988 and under Heading 4823.90 on and after March 1, 1988, and that cotton fabric based laminates are classifiable under Heading 3922.90 till February 28, 1988 and under Heading 3926.90 on and after March 1, 1988. As regards paper based insulators it was held that same are classifiable under Heading 8546.00. In taking the said view the Tribunal has followed its earlier judgments in Amit Polymers & Composites Ltd., Hyderabad Vs. CCE Hyderabad, 1989 (20) ECR 454 and M/s. Meghdoot Laminate Pvt. Vs. CCE Ahmedabad Order Nos. 552 to 572/89 dated September 29, 1969. As regards paper based insulators the Tribunal has placed reliance on its decision in CCE Ahmedabad Vs. Metro Wood Engineering Works, 1989 (22) ECR 369. Civil Appeals Nos. 1852-53 of 1991 have been filed by the Revenue against the said judgment of the Tribunal.

3. The same view was taken by the Tribunal in judgment dated August 17, 1991 in the case of M/s. Meghdoot Laminate Pvt. Ltd. and in the judgment dated November 3, 1995 in the case of M/s. Moti Polymers in respect of paper based decorative laminated sheets which were held to be classifiable under Heading 4818.90 and not under Heading 3920.21 as claimed by the Revenue. Civil Appeals Nos. 2516-21 of 1991 and Civil Appeal No. 11899 of 1995 have been filed against the said judgment of the Tribunal.

4. On behalf of the Revenue it has been submitted that the matter now stands covered by the recent judgment of this Court in CCE Hyderabad Vs. Bakelite Hylam Ltd., (1997) 91 ELT 13 (SC). In that

case the Court has considered the, questions regarding the classification for the purpose of excise duty of the following items : (i) Decorative laminated sheets; (ii) Industrial laminated sheets which are paper based, and (iii) Glass Epoxy laminated sheets. In the judgment under appeal in that case the Tribunal had held that all these varieties of laminated sheets were not covered by Entry 15-A(2) and were classifiable under residuary Item 48 of the Old Tariff which was in operation prior to coming into force of the Act and that the said products were classifiable under Heading 4818.90 till February 28, 1988 and under Heading 4823.90 on or after March 1, 1988 and that they did not fall under Heading 3920.21 till February 28, 1988 and under Heading 3920.37 on or after March 1, 1988 of the New Tariff in the Schedule to the Act. Reversing the said view of the Tribunal, this Court has held that the Tribunal had rightly classified decorative laminates under residuary Item 68 of the Old Tariff. But as regards classification under the New Tariff, this Court set aside the decision of the Tribunal in so far as it classified decorative laminated sheets under Heading 4818.90/4823.90 of the New Tariff and held that decorative laminated sheets were classifiable under Heading 3920.31/3920.37 of the New Tariff. In respect of industrial laminated sheets and glass epoxy laminated sheets it was held that they had been correctly classified by the Tribunal under Heading 7014/8546 of the New Tariff.

5. In view of the judgment of this Court in Bakelite Hylam Ltd., (supra) the decision of the Tribunal holding that paper based insulators manufactured by M/s. Wood Polymer Ltd., [respondents in Civil Appeals Nos. 1852-53 of 1991] are classifiable under Heading 8546 of the New Tariff must be upheld since it is in consonance with the decision of this Court in Bakelite Hylam Ltd., (supra). The only question that remains is with regard to classification of paper based decorative laminated sheets/boards and cotton fabric based laminated sheets.

6. Shri F.S. Nariman, the learned senior counsel appearing for the respondents in Civil Appeals Nos. 1852-53 of 1991, has, however, urged that the decision of this Court in Bakelite Hylam Ltd., (supra) does not lay down the correct law and it needs reconsideration in so far as it relates to classification of paper based decorative laminated sheets.

7. In order to deal with the said submission of Shri Nariman we would set out the relevant entries in the New Tariff which were in these terms:

Heading No Sub-heading No Description of 3920 Other Plates, Sheets, Film Foil and Strip, of plastics, non-cellular, whether lacquered or metallised or laminated, supported or similarly combined with other materials or not of regenerated Cellulose:

3920.21 Film of thickness not exceeding 0.25 millimeters. Of Other Plastics:

3920.31 Rigid plates, sheets, film foil and strip. 4818 Other Articles of Paper Pulp, Paper, Paper-Board, Cellulose Wadding or Wabs of Cellulose Fibers 4818.90 Other.

8. Some changes were made in the tariff entries in the Schedule to the Act with effect from March 1, 1988 and Heading No. 3920.31 was re-numbered and as a result plates, etc. of other plastics that were "Rigid laminated" were placed in Heading 3920.37. Similarly, Heading 48.18 was re-numbered as 48.23 and sub-heading 4818.90 was numbered as 4823.90 with effect from March 1, 1988.

9. The New Tariff introduced by the Act prescribes the Rules of Interpretation of the entries and in respect of goods which are prima facie classifiable under two or more headings the following provision is contained in Rule 3:

"3. When by application of sub-rule (b) of Rule 2 or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable,

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration."

10. Shri Nariman has urged that test to be applied for classification for the purpose of excise duty is the 'common parlance test', i.e., the sense in which the product is understood in the trade parlance or commercial usage and understanding. The learned counsel has submitted that paper based decorative laminates are manufactured by passing several sheets of duty paid craft paper through resin bath and are impregnated with a chemical solution classified as resin solution (phenol formaldehyde solution). It is submitted that the paper based decorative laminates are, therefore, primarily paper falling in Chapter 48 dealing with paper and paper board, articles of paper pulp and does not fall in Chapter 39 which deals with plastic and articles there to. It is submitted that this Court in *Bakelite Hylam Ltd.*, (supra) has considered the question in the light of Rule 3 of the Rules of Interpretation and has not examined the trade parlance and commercial understanding test. It has also been urged that evidence in the form of certificate of traders, dealers and users, expert opinions, trade literature and marketing material were produced before the authorities to show that the decorative laminates are in commercial parlance are not known as plastic and are not sold, marketed and used as article of plastic.

11. We are unable to accept the said contention of the learned counsel. In view of the rules regarding Interpretation which are contained in the New Tariff the matter of classification has to be considered in the light of the said rules. As indicated earlier, Rule 3 of the said rules contains the principles to be applied for classification of goods which are prima facie classifiable under two or more headings. Since decorative laminates are composite goods made from different components, namely: paper and chemical solutions with which it is impregnated, the classification of decorative laminates has to be determined in the light of Rule 3(b). According to the said rule, composite goods consisting of different materials or made up of different components which cannot be classified by reference to sub-rule (a) shall be classified as if they consisted of the material or components which gives them their essential character insofar as this criterion is applicable. As a result of impregnation with the chemical solutions the character of paper is changed into decorative laminates and it is the chemical solutions which give them their essential character. In this regard, this Court in *Bakelite Hylam Ltd.*, (supra) has said:

"In the present case, the essential character of a decorative laminated sheet is its rigidity or strength and its resistance to heat and moisture. These are essentially

characteristics which are imparted by resins. Paper does not possess any of these characteristics. Therefore, applying Rule 3(b) and going by the essential characteristics of such laminated sheets, these goods are more appropriately classifiable under Chapter 39."

12. Reliance has been placed by the Court on the following Explanatory Note to Chapter 39 in the Harmonized System of Nomenclature

"Combinations of plastics and materials other than textiles:

This Chapter also covers the following products, whether they have been obtained by a single operation or by a number of successive operations provided that they retain the essential character of articles of plastics:

(c) Paper reinforced stratified plastic sheeting, and products consisting of one layer of paper or paper board coated or covered with a layer of plastics, the latter constituting more than half the total thickness, other than wall coverings of heading 48.14.

(d) Products consisting of glass fibres or sheets of paper, impregnated with plastics and compressed together, provided they have a hard, rigid character. (If having more the character of paper or of articles of glass fibers they are classified in Chapter 48 to 70, as the case may be.)".

13. It has been pointed out that Explanatory Note clearly provides that sheets of paper impregnated with plastics and compressed together, as in the present case, provided they have a hard, rigid character would fall under Chapter 39 and if having more the character of paper or of articles of glass fibers they are classified in Chapters 48. Since the decorative laminated sheets are hard and rigid in character, they are classifiable under Chapter 39 and not under Chapter 48.

14. Shri Nariman has placed reliance on the decision of this Court in *Moti Laminates Private Ltd. Vs. Collector*, 1995 (76) ELT 241 (SC), wherein it has been held that Phenol Formaldehyde (Resol) is not "goods" capable of being bought and sold. Shri Nariman has also, submitted that classification of decorative laminated sheets can be determined under Rule 1 of the rules of interpretation which reads as under:

"1. The titles of Sections and Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the provisions hereinafter contained."

15. In *Bakelite Hylam Ltd. (supra)* this Court has taken note of Rule 1. It has been pointed out that Rule 1 does not help to classify the goods in question because in view of Note 1(f) Chapter 48 is not applicable to these goods. Under Note 1(f) to Chapter 48 paper reinforced stratified plastic sheeting or one layer of paper or paper board coated or covered with a layer of plastics the latter constituting more than half the total thickness or articles of such materials, other than wall coverings of heading No. 48.14. do not fall that Chapter but fall in chapter 39. In view of the said provision in Chapter 48 it has been held that Rule 1 cannot be invoked and the matter of classification has to be determined in accordance with Rule 3(b) of the Rules of Interpretation.

16. In Moti Laminates Private Ltd. (supra) this Court was considering the question whether resin or rosol are produced in the process of manufacturing laminated sheets are liable to payment of excise duty for the reason that artificial or synthetic resins and plastic materials are leviable goods under Item 15A of the old tariff. It was held that rosol or resin is not marketable or capable of being marketed and, therefore, the same was not subject to duty. The said decision in Moti Laminates Private Ltd. (supra) does not have any bearing on the question of classification of paper based decorative laminated sheets produced by the respondents.

17. It has been pointed out that by Finance Act, 1997 the Central Excise Tariff Act, 1985 has been amended and the following new sub-Heading 4823.40 has been inserted :

"4823.40. Products consisting of sheets of paper or paper board, impregnated, coated or covered with plastics (including thermostat resins or mixtures thereof or chemical formulations containing melamine, phenol or urea formaldehyde with or without curing agents or catalysts), compressed together in one or more operations products known commercially as decorative laminates".

18. The submission is that the insertion of the said new entry in Chapter 48 has to be regarded as legislative recognition of the commercial understanding that decorative laminates is an article of paper because products known commercially as decorative laminates have been included in the said entry falling in Chapter 48 which relates to paper and paper boards. We are unable to accept this contention. Decorative laminates have been mentioned in the entry falling in sub-Heading 4823.40 which has been inserted in Chapter 48 presumably in view of the decisions of the Tribunal holding that paper based decorative laminated sheets fall under Chapter 48. The insertion of the said entry in Chapter 48 does not, in our opinion, mean that the interpretation placed by this Court in Bakelite Hylam Ltd. (supra) on the entries, as they stood prior to insertion of the entry falling in sub-heading 4823.40, is not correct and it needs reconsideration. We are, therefore, unable to accept the contentions urged on behalf of the respondents seeking reconsideration of the decision of this Court in Bakelite Hylam Ltd. (supra).

19. In accordance with the law laid down in Bakelite Hylam Ltd. (supra) it must be held that paper board decorative laminated sheets and cotton fabric based laminates are classifiable under Heading 3920-31/3920.37 of the New Tariff and the decision of the Tribunal holding that the same are classifiable under tariff entries 4818.90/4823.90 and 3922.90/3926.90 cannot be upheld and has to be set aside.

20. In the result, Civil Appeals Nos. 1852-53 of 1991 are partly allowed and, while maintaining the decision of the Tribunal that the paper based insulators are classifiable under Heading 8546.00, the decision of the Tribunal holding that paper based decorative laminated sheets are classifiable under sub-heading 4918.90 till February 28, 1988 and under sub-heading 4823.90 on and after March 1, 1988 and cotton fabric based laminated decorative boards are classifiable under sub-heading 3922.90 till February 28, 1988 and under sub-heading 3926.90 on and after March 1, 1988 is set aside and it is directed that the paper based decorative laminated sheets and cotton fabric based laminated decorative boards are classifiable under sub-heading 3920.21 till February 28, 1988 and under sub-heading 3920.37 on and after March 1, 1988.

21. Civil Appeals Nos. 2516-21 of 1992 and 11899 of 1996 are also allowed and the judgment of the Tribunal holding that paper based decorative laminated sheets are classifiable under sub-heading 4818.90 is set aside and it is held that the said product is classifiable under sub-heading 3920.31 till

February 28, 1988 and under sub-heading 3920.37 on and after March 1, 1988. No order as to costs. CIVIL APPEALS NOS. 7027/1995, 7029/1995, 9483/1996, 221/1997, 10466/1995, 10489/1995.

22. These appeals are filed against the judgment of the Tribunal dated July 18, 1995 whereby the claim of the appellants for payment of excise duty at the concessional rate on the basis of notification No.135/89-CE dated May 12, 1989 has been negated.

23. The appellants manufacture paper based decorative laminated sheets. The said products are made by coating and, impregnating paper in chemical solution, namely, Phenol Formaldehyde Solution and Melamine Formaldehyde solution. Notification No.135/89 dated May 12, 1989 provided as follows:

"Notification No.135/89-C.E.dated 12.5.1989. In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods falling under sub-heading No.4823.90 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than products consisting of sheets of paper or paper board impregnated, coated or covered with plastics, compressed together in one or more operations, from so much of the duty of excise leviable thereon which is specified in the said schedule as is in excess of the amount calculated at the rate of 12% ad valorem."

24. The said notification was subsequently replaced, by Notification No.20/94-C.E.dated March 1, 1994 which was in the following terms:

"Notification No.20/94-C.E. dated 1.3.1994 In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description, specified in column (3) of the Table hereto annexed and falling within the Chapter or sub-heading Nos of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as are specified in column (2) of the said Table, from so much of the duty of excise leviable thereon which is specified in the said Schedule, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table.

Chapter/sub-Description of goods Rate No.head No.

(1)(2)(3)(4)

1.48 Maplitho paper and Kraft Nil paper supplied to a Braille press against an indent placed by the National Institute for Visually Handicapped, Dehradun.

2.48 Paper splints for matches, Nil whether or not waxed.

3.48 Asphaltic roofing sheets Nil.

4.48 Paper pulp moulded trays Nil.

5.48 Cellulose insole board or 10% sheets advalorem.

6.4811.30 All goods, other than products 20% and consisting of sheets of paper ad 4823.90 or paper board impregnated, valorem coated or covered with plastics, compressed together in one or more operations.

25. By Notification No.144/94-C.E. dated December 22, 1994 Notification No.20/94 dated March 1, 1994 was amended and entry at serial No.6 in the table annexed with the said notification was substituted by the following entry:

"All goods, other than the following, namely :-

Products consisting of sheets or paper or paper board impregnated, coated or covered with plastics (including thermoset resins or mixtures thereof or chemical formulations containing melamine, phenol, urea or formaldehyde with or without curing agents or catalysts), compressed together in or more operations, or (b) Products known commercially as "decorative laminates"."

26. The case of the appellants is that till the issuance of Notification No.144/94 dated December 22, 1994 they were liable to pay concessional rate of excise duty on the basis of Notification No.20/94 dated March 1, 1994 and only as a result of the amendment made in the said notification by Notification No.144/94 dated December 22, 1994 paper or paper board impregnated, coated or covered with plastics known as "decorative laminates" have been excluded from the benefit of such concessional rate of excise duty. The submission of the appellants is that the products manufactured by them fall under sub-heading 4823.90 and do not fall under the exception since they are not laminated sheets or paper impregnated, coated or covered by plastics but are made by coating and impregnating with chemical known as Phenol Formaldehyde Solution and Melamine Formaldehyde solution which is unstable and unmarketable and which is not resin and it cannot be said that the paper is coated or covered with resins. In support of the aforesaid submission reliance is placed on the decision of this Court in Moti Laminates Private Ltd.(supra). The Tribunal has held that the decision in Moti Laminates Private Ltd.[supra] was rendered in the context of marketability and it was not relevant to determine whether the final product of the appellants is eligible to claim the benefit of concessional rate of duty in terms of Notification No.135/89.

27. In Bakelite Hylam Ltd.(supra) this Court has held that paper based decorative laminated sheets or boards do not fall in Chapter 48 but fall in Chapter 39 of the New Tariff introduced by the Central Excise Tariff Act, 1985 and it cannot be classified under sub-heading 4818.90 till February 28, 1988 and under sub-heading 4923.90 on or after March 1, 1988. In view of the said decision the products manufactured by the appellants, namely, paper based decorative laminated sheets do not fall under sub-heading 4923.90. The appellants are, therefore, not entitled to claim the benefit of concessional rate of duty on the basis of Notification No.135/89 dated May 12, 1989 and the Notification No.20/94 dated March 1, 1994. The fact that products known commercially as decorative laminates have been expressly mentioned in entry at serial No.6, as substituted on the basis of Notification No.144/94 dated December 22, 1994, does not mean that prior to the issuance of the Notification No.144/94 dated December 22, 1994 products known commercially as decorative laminates fell within the ambit of the Notifications No.135/89 dated May 12, 1989 and No.20/94 dated March 1, 1994 for the purpose of concessional rate of duty. The insertion of products known commercially as decorative laminates by Notification No.144/94 dated December 22, 1994 only means that these products have been expressly excluded for the purpose of applicability of the concessional rate of duty.

28. There is, therefore, no merit in these appeals and the same are accordingly dismissed. But in the circumstances there is no order as to costs.