

SUPREME COURT OF INDIA

Fibrotex

Vs.

Commissioner of Central Excise, Mumbai-I

C.A.No.4099 of 1998

(S. N. Variava and H. K. Sema JJ.)

01.04.2004

JUDGMENT

1. Both these Appeals are being disposed of by this common Judgment.
2. Briefly stated the facts are as follows:-

“The Appellant manufactures textile hose pipe which are lined with rubber. In respect of the hose pipe there also appears to be a dispute regarding classification. But we are not concerned with that dispute in these Appeals. In these Appeals the dispute is whether the rubber latex solution used by the Appellants, to line those hose pipes/ falls under Tariff Item No. 40.01 or 40.05.”

3. The Appellants had on 1-4-1986 filed a classification list classifying the rubber latex solution under Tariff Item No. 40.05. Thereafter, a sample was taken for chemical analysis by the Superintendent of Central Excise. By a letter dated 3-4-1986 the Appellants set out the raw material used in the manufacture of this rubber latex solution. As per the letter the raw material used are as follows:-

1. Accelerators max.4%
2. Anti-oxidant 2.5%
3. Dispersing Agent 1%
4. Activators 2.5%
5. Calsoline Oil"

4. On 22-5-1986 the Appellants filed a second classification list. They again classified the product under Tariff Item 40.05. However, the Appellants claimed benefit of Notification No. 250/86, dated 11-4-1986. By this Notification rubber latex in the form of liquid, paste or

dispersions falling under Tariff Item No. 40.01 was exempt from the whole of excise duty leviable thereon. A show cause notice was issued to the effect that the Appellants were not entitled to the benefit of Notification No. 250/86 as their product fell under Tariff Item No. 40.05. The Assistant Collector by his order, dated 7-10-1986 held that the product was classifiable under Tariff Item No. 40.05. It was held that the benefit of the Notification was not available.

5. The Appellants filed an Appeal before the Collector (Appeals). During the pendency of the Appeal, the Appellants got the product tested for a second time. They obtained the second test report. On 22-2-1988, a Trade Notice was also issued to the effect that rubber solution manufactured by dissolving natural rubber in organic solvent would not fall under Tariff Item No. 40.01 or 40.02.

6. On 17-4-1989 the Collector (Appeals) allowed the Appeals and held that the product was classifiable under Tariff Item No. 40.01. The Department filed an Appeal to Customs, Excise and Gold (Control) Appellate Tribunal (for short 'the Tribunal'). The Tribunal has by the impugned Judgment allowed the Appeal and held that the product is classifiable under Tariff Item No. 40.05.

7. It is submitted that natural rubber would solidify unless certain items are added to it in order to maintain its viscosity and to keep it in a liquid form. Reliance was placed upon Chapter Note 5(b) which provides that the presence of small amounts of antioxidants and preservatives would not take the rubber out of Tariff Item 40.01 or 40.05. However, it must be noted that that Chapter Note 5(a) categorically states that Tariff Items 40.01 and 40.02 would not apply to any rubber or mixture of rubbers which has been compounded, amongsts others, with vulcanising agents or accelerators or activators. Chapter Note 5(b), which has been relied upon, does not in any way affect Chapter Note 5(a), which is the governing provision.

8. As has seen as set out above, according to the Appellants, the rubber solution is mixed with accelerators to the extent of 4% and activators to the extent of 2.5%. This by itself would show that the product cannot be classified under Tariff Item No. 40.01. The first test report shows that the product was a compounded latex solution. Thus by virtue of Chapter Note 5(a) the product could not be classified under Tariff Heading 40.01. The second test report shows that the product is a vulcanized rubber latex. If it is vulcanized then it cannot fall under Tariff Item. No.40.01. Thus all material on record indicates that the product cannot be classified under Tariff Item 40.01. As it does not fall under Tariff Item 40.01 the benefit of Notification No. 250/86 would not be available to the Appellants.

9. It must be mentioned that Civil Appeal No. 4107/98 has been filed against the Orders by which duty is levied and confirmed under Tariff Item No. 40.05. In the view which we have taken it cannot be said that the Tribunal was wrong in either classifying the product under Tariff Item No. 40.05 and/or confirming the demand of duty payable under Tariff Item No. 40.05.

10. In view of the above, the Appeals stand dismissed. There will, however, be no order as to costs.