

SUPREME COURT OF INDIA

Fenner India Limited

Vs.

Collector of Central Excise

C.A.Nos.15554-15556 of 1996

(Mrs.Ruma Pal and P. Venkatarama Reddi JJ.)

07.04.2004

JUDGMENT

1. The appellant is aggrieved by the decision of the Tribunal upholding the demand on account of excise duty under the *Central Excises and Salt Act, 1944* (as it then stood) (referred to as 'the Act') for the period 1-5-81 to 28-2- 86.

2. The appellant has made the following submissions;

“(i) the Department had wrongly classified the conveyor belts manufactured by the appellant under Tariff Item 19(111) instead of Tariff Item 68 of the Act. The language of the Tariff Item 19(111) clearly shows that it applied only to fabrics treated with natural and artificial plastic. It is submitted that there are three kinds of plastic used for such treatment viz. natural, artificial and synthetic. Synthetic fabrics treated with synthetic plastic were excluded from Tariff Item 19(111). It is said that the appellant's conveyor belts were manufactured with synthetic plastic and therefore not covered by Tariff Item 19(111).

(ii) Both the Tribunal and this Court have held that conveyor belts of the kind manufactured by the appellant were not classifiable under Tariff Item 68. Reliance has been placed on the decisions of the Tribunal in *International Conveyors Ltd. Aurangabad v. Collector of Central Excise, Bombay*¹, *International Conveyors Ltd. Aurangabad v. Collector of Central Excise, Pune*², *Multiple Fabrics Co. P. Ltd., Calcutta v. Collector of Central Ex- cise, Calcutta*³, and the decision of this Court in *Collector of Central Excise Calcutta v. Multiple Fabrics Pvt. Ltd. etc. - .*

(iii) The Central Board of Excise and Customs had issued a tariff ad- vice on 3-11-80 in connection with the "plastic coated PVC impregnated conveyor beltings" by which it is said that such item was classifiable under Tariff Item 68. The tariff advice was binding on the Revenue as has been held by this Court in *Collector of Central Excise, Patna v. Usha Martin Industries - 6 and Collector of Central Excise, Vadodara v. Dhiren Chemical Industries*⁴.

(iv) The reliance placed by the Department as well as by the Tribunal on the decision of this Court in *Collector of Central Excise, Hyderabad v. Fenoplast P. Ltd.* - is misplaced as that decision relates to PVC impregnated fabrics viz. rexine cloth and not conveyor belts at all.

3. Learned Counsel for the respondent, however, has submitted that the decision in *Fenoplast (P) Ltd.* (supra) clearly indicates the method by which products such as conveyor belts PVC impregnated were to be classified and applying that method the commodity manufactured by the appellant comes only under Tariff Item 19(111). It is further submitted that the Tariff Advice had been issued prior to the introduction of Section 37(B) in the Act and, therefore, would not bind the Revenue insofar as it was contrary to the decision of this Court in *Fenoplast (P) Ltd.*

4. We are unable to accept the submission of learned Counsel for the respondent. There was no occasion for the Revenue or the Tribunal to have applied the decision in *Fenoplast P. Ltd.* (supra) by inference when there were specific decisions of not only the Tribunal but of this Court as well in respect of the commodity in question. Besides the trade notice was binding on the Revenue. It was not contrary to any decision of this Court but in keeping with the decision of this Court in *Multiple Fabrics Co. (P) Ltd.* Taking into consideration the earlier decision as well as the Trade Notice issued by the Central Board of Excise and Customs, we are of the view that the Tribunal erred in upholding the Revenue's demand. The appeals are, accordingly, allowed. However, we make it clear that while quashing the demand of the respondent for the period in question the appellant will not proceed with its claim for refund in respect of the earlier period on the ground that it may have paid excise duty on conveyor belts under Tariff Item 19(111).

5. There shall be no order as to costs.

¹1983 Indlaw CEGAT 355

²1983 Indlaw CEGAT 453

³1983 Indlaw CEGAT 188

⁴2001 (47) RLT 881