

SUPREME COURT OF INDIA

Natson Laminates

Vs.

Commissioner of Central Excise, Mumbai

C.A.No.7301 of 1999

(C. K. Thakker, Ruma Pal and Arijit Pasayat JJ.)

02.03.2005

JUDGMENT

C. K. Thakker, J.

1. CA No. 7301/99: The issue in this appeal turns on the language of Notification 82/88-C.E., dated 1st March, 1988. The Notification which was issued under Section 8 of the Central Excise Rules, 1944 exempted goods of the description specified in Column 3 of the table annexed to the Notification from so much of the duty of excise which was in excess of the rate calculated under Column 4 of table.

2. The table read as follows:

SI
Sub-heading
Description of goods
Rate
1
2
3
4
1.
5903.19

Textile fabrics, Impregnated, coated, covered or laminated with plastics, of base fabrics of cotton.

Rs. 4.50 per square metre plus the duty for the time being leviable on the base fabrics under Chapter 52, if not already paid.

2. Textile fabrics, Impregnated coated, covered or laminated with plastics, of base fabrics of man-made textile materials.

Rs. 5.25 per square metre plus the duty for the time being leviable on base fabrics under Chapter 54 or 55, as the case may be, if not already paid.

3. 5903.99

Other textile fabrics Impregnated, coated, covered or laminated with plastic.
Rs. 5.50 per square metre.

3. Both the Commissioner as well as the Tribunal came to the conclusion that by virtue of the words "under Chapter 52, Chapter 54 or 55" in Column 4, the exemption was only available to goods, the base fabric of which was classified under any of those Chapters.

4. Learned Counsel appearing on behalf of the appellant assessee has submitted that there was a basic misconception as to the role which entries under Column 4 had to play. Column 4 only dealt with the rate and therefore the reference to Chapter 52 or Chapter 54 or 55 was only for the purpose of measurement of the rate and not for the purpose of defining the goods. Reliance has been placed upon the decision of this Court in *J.K. Steel Ltd. v. Union of India* reported in to contend that the rate was not to be confused with the pre-condition for the operation of the Notification.

5. It may be noted here that the issue raised in this appeal also came up by way of a reference to a Larger Bench of the Tribunal in the matter of *CCE, Aurangabad v. Entramonde Poly Coalers Ltd.* The Larger Bench held that the reference to Chapter Headings under the rate column did not mean that the base fabrics had to be made out of the material referable to those Chapters. The decision in the *Entramonde Poly Coalers Ltd.* is the subject matter of separate appeals before us today namely, 4049/01 CCE, Aurangabad v. Entramonde Poly Coalers Ltd.

6. It is clear from the language of the Notification that the exemption was granted to the goods described in Column 3. Column 3 speaks of 'base fabrics of cotton'. The word cotton is not limited by reference to any Chapter Heading. Therefore, textile fabrics impregnated, coated, covered or laminated with plastics of base fabric of any form of cotton under any Chapter of the Central Excise Tariff Act, would be entitled to the benefit of the Notification at the rates specified under Column 4. As far as the rate is concerned the applicable rate would be that which was leviable on base fabrics under Chapter 52, Chapter 54 or 55 as specified against the various serial numbers in the Notification. Incidentally, It may also be mentioned that in the present case, the appellant's base fabric was cotton which was classifiable under Chapter 60 Tariff Heading 60.01. By Notification 109/86-CE., dated 27-2-1986 the rate of duty as far as goods classifiable under, inter alia, Heading No. 60.01 was put on par with the rate for woven fabrics falling under, inter alia, Chapters 52, 54 or 55. In real terms therefore there was no distinction, as far as rates were concerned, with regard to the appellant's goods.

7. The decision in J.K. Steel Ltd. v. Union of India (supra) also turned on the language of the Entry 26AA of the Central Excise Tariff Act. The dispute related to the first paragraph of Tariff Heading 26AA which reads as follows:

26-AA. IRON OR STEEL PRODUCTS, THE FOLLOWING, NAMELY :-

(1) Bars, rods, colls, wires, joists, girders, angles, channels, tees, flats, beams, zeds, trough, piling and all other rolled, forged or extruded shapes and sections, not otherwise specified Five per cent, ad valorem plus the excise duty for he time being leviable on pig iron or steel ingots, as the case may be.

8. The arguments before the Court on behalf of the assessee was that they fell within the description of the goods by reason of the language contained in the rates column. In negating the submission this Court said:

"It seems to me that this is the true interpretation of column 3 of item 26AA(i). It simply prescribes a rate of duty as the heading of column indicates. It is not concerned with actual ingots out of which other articles are made. It is not concerned with whether that steel ingot has paid excise duty or countervailing duty or not. It is a simple formula perhaps inartistically formulated. It is said that the item should be strictly construed, it being a taxing enactment. But no rule or principle of construction requires that close reasoning should not be employed to arrive at the true meaning of a badly drafted, entry in an Excise Act. I believe I am not stretching the language of the entry against the subject, but it appears to me that in the context of the scheme of the Excise Act this is the only reasonable construction to give to the entry."

9. The reasoning would be equally apposite to the Notification in question. It is true that the onus of proving that the assessee's goods fall within an exemption is on the assessee, but we are of the opinion that the onus has been discharged by the assessee on the plain language of the Notification. We accordingly uphold the decision of the Larger Bench of the Tribunal as expressed in CCE, Aurangnbad v. Entramonde Poly Coalers Ltd. and allow this appeal by setting aside the impugned judgment.

C.A. Nos. 4049, 4985, 8048, 2616, 4566/03:

10. The appeals are dismissed