

M/S. RAJA RADIO CO., BOMBAY
v.
COLLECTOR OF CUSTOMS, BOMBAY

MAY 2, 1995

[R.M. SAHAI, S.B. MAJMUDAR AND SUJATA V. MANOHAR, JJ.]

Customs Tariff Act, 1975:

Excise—Import of Class E high temperature resisting material—Paper with plastic coatings and electrical insulating paper—Levy of duty—Held leviable under heading 39.01/06 and not under 48.01/21—Levy of counter vailing duty under Tariff Item 68 held proper.

The appellant-Company imported a consignment of Class E and other high temperature resisting material comprising of either a sheet of temperature resisting paper (popularly known as presspahn) which is coated on one side with a thin layer of polyester film or two layers of presspahn in which a polyester film is inserted for rigidity and added insulation. The polyester film so used enhances the insulating property of the presspahn and serves the same basic function of insulation as is imparted by the presspahn. These goods are used to provide insulation against the high temperature generated in the coils of electric motors. The appellant paid duty on these goods under Heading 39.01/06 of the Customs Tariff Act with Counter-vailing duty under Tariff Item 17(2) of Central Excise Tariff but later claimed refund on the ground that these goods were dutiable under Heading 48.01/21 of Customs Tariff Act read with notification No. 37-Customs dated 1.3.1978. The claim was dismissed by the Assistant Collector on the ground that E-class paper coated with plastic is considered as plastic material assessable under Heading 39.01/06. The Collector (Appeals) held that the weight of imported material being far in excess of 180 grams per sq. mt it was paper board to which the notification was not applicable. On further appeal the Customs, Excise and Gold (Control) Appellate Tribunal held that the plastic component being more active in the case of E class insulating materials the goods were to be treated as resin or plastic material covered by Entry 39. As regards the counter-vailing duty the Tribunal held that it was leviable under Item 68 of the Customs Tariff.

A Against the decision of the Tribunal both the assessee and the Revenue preferred appeals before this Court.

Dismissing the appeals, this Court

B HELD : 1. The order of the Tribunal is upheld but for different reasons. In view of Rule 1 of the Rules for interpretation of the Schedule, as it stood, the headings in Chapters 39 and 48 have to be determined according to notes. They cannot be ignore. There is nothing either in the notes or in the heading of 39.01/06 to suggest that it applies to paper coated with plastic. In fact the word such as to amplify the words 'artificial resin' in the heading has not been used before artificial plastic material. Read on its own probably it would have been difficult to include paper laminated with polyester film. But when the notes in Chapter 48 dealing with paper and paper board are examined, then the entire picture changes. The entry under heading 48.01/21 during relevant period was very wide. It included composite paper and impregnated or coated paper. When the notification No. 37 exempted electrical insulating paper falling under Chapter 48 then it obviously meant that such material fell under the entry. The Tribunal lost sight of the fact that the notes to Chapter 48 mentioned that the Chapter did not cover certain items, one of them being mentioned at (e). The effect of note(e) was two-fold, one that it excluded such papers which were coated with plastic or laminated with polyester film from heading 48 and other that they were covered in Chapter 39. Therefore, paper of the type imported by the appellant which had plastic coating and were electrical insulating paper was properly subjected to duty under 39.01/06. [1043-D, E, 1044-B-D, F]

F 2. Revenue has failed to demonstrate that the order levying countervailing duty under Tariff Item 68 suffers from any error of law. [1045-B]

Sunrise Electric Corporation, Bombay v. Collector of Customs, Bombay, [1983] 13 ELT 1038 and [1983] 14 ELT 2465 and *Collector of Customs, Bombay v. Wash Udyog Sawantwadi*, [1987] 31 ELT 73, referred to.

G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 32-39 of 1986 Etc.

H From the Judgment and Order dated 13.2.85 of the Central Customs Act, 1962 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Order No. 42 to 49 of 1985-D.

Dushyant Dave, U.A. Rana, Rajiv Tyagi, Anand Prasad and B.R. A
Atre for Gagrat & Co. for the Appellant.

M. Gourishankar, R.P. Srivastava and V.K. Verma for the Respon-
dent.

The Judgment of the Court was delivered by

R.M. SAHAI, J. These are two sets of appeals, one filed by the
importer and the other by the Department against the order of Customs,
Excise and Gold (Control) Appellate Tribunal, New Delhi. The appellant
imported consignment of Class-E and other high temperature resisting
materials between 1.3.78 and 31.8.78. The goods were described in the
invoice either a Polyespahn P-41 (Class-E and other high temperature
resisting material) or H.P. (Class E and other high temperature resisting
material). They are composite goods comprising of either a sheet of
temperature resisting paper (popularly known as Presspahn) which is
coated on one side with a thin layer of polyester film or 2 layers of
presspahn in which a polyester film is inserted for rigidity and added
insulation. These goods are used to provide insulation against the high
temperature generated in the coils of electric motors. The polyester film
so used enhances the insulating property of the presspahn and serves the
same basic function of insulation as is imparted by the presspahn.

The goods were subjected to duty under Heading 39.01/06 C.T.A.
with Counter-vailing duty under T.I. 17(2) CET. The appellant paid the
duty. Subsequently it filed application claiming refund as the goods were
dutiabale under Heading 48.01/21 CTA read with notification No. 37-Cus-
toms dated 1.3.1978. These applications were dismissed by the Assistant
Collector as the E-Class paper coated with plastic is considered as plastic
material assessable under Heading 39.1/06. The appellant filed appeal. The
Collector (Appeals) held that the weight of imported material was far in
excess of 180 grams per sq. mt. Therefore, it was paper board and the
notification no. 37 dated 1.3.78 applied to electric grade insulating paper
and not to paper board. It was observed that a notification was issued on
7th September 1978 extending the benefit of notification to paper board as
well. But since the consignment of the appellant had been imported prior
to this date it was not entitled to exemption under the amended notification

A as the amended notification was prospective in operation. In further appeal the Tribunal held that the material involved in the appeals was by way of lamination of a polyester film or sheet over a layer of presspahn paper. The Tribunal did not agree that the composite article consisting of paper laminated or sandwiched with plastic sheet or film having a specific description were to be preferred to a more general description and, therefore, it was interpretative Rule 3(a) of the Customs Interpretation Rules which applied. It further held that the plastic component being more active in the case of E-Class insulating materials the goods were to be treated as resin or plastic material covered by Entry 39. The Tribunal, however, while classifying the goods under Heading 39.01/06 held that so far the counter-vailing duty was concerned it was leviable under Item 68 of the Customs Tariff. The appellant is aggrieved by the classification of goods under Heading 39 whereas the Department is aggrieved by levy of counter-vailing duty under Item 68 instead of 17.

D Taking up the appeals of the importer, the dispute is whether Class E and other high temperature resisting material could be subjected to duty under Chapter 39 or Chapter 48 of the Schedule of Customs Act. The controversy has been subject matter of three decisions by the Tribunal, two in *Sunrise Electric Corporation, Bombay v. Collector of Customs, Bombay*, [1983] 13 ELT 1038 and [1983] 14 ELT 2456 and one in *Collector of Customs, Bombay v. Wash Udyog Sawantwadi*, [1987] 31 ELT 73. The first decision was rendered on 5th April, 1983. The Tribunal after going into the IS Specification of press paper both in India and Britain held that,

F "it was abundantly clear from the technical specifications contained in the 3 Indian Standards - IS: 1576- 1967, IS: 4661-1968 and IS: 8570-1977, and the 2 British Specifications BS: 231-1975 that presspahn paper is electrical grade insulation paper whose thickness ranges from 0.10 mm. to 0.50 mm. In the absence of any statutory demarcating line between "paper" and "board" either in the tariff schedule or in the relevant notification, we have to go by the understanding in the electrical trade and industry and, for this purpose, the Indian Standards and British Standards relevant to paper and board for electrical purposes amply make it clear that the thickness of presspahn paper could range from 0.10 mm to 0.50 mm. In the case of the imported goods are the subject matter

of this batch of appeals, the thickness of the imported paper ranges from 0.18 mm. to 0.40 mm." A

Therefore, the appellants were held entitled to the benefit of the notification. The other decision in *Wash Udyog* (supra) was rendered on 24.6.1983. This decision went in favour of the Collector and it was held that the goods imported were composite material. They owed their essential characteristic of electrical insulation to the plastic portion than to the paper backing. Further, according to the Tribunal, E Class insulating material must possess temperature resistance of 120 degree C plus higher degree of dielectric strength etc. Presspahn paper or board was not capable of giving insulation of such high degree. The Tribunal held that such high degree of insulation in 'E' Class material came only from the plastic portion of the goods, therefore, the presspahn paper or board even though impregnated could not become insulating material in the notification. The Tribunal held :- B C

"Thus, it is not the bulk but the property of giving the essential character which is the criterion applicable to the case before us and since in E class insulating material the essential characteristic of higher degree of insulation comes from the plastic portion, the classification has to be under Heading 39.01/06 only". D

The relevant notification No. 37 of 1.8.78 read as under : E

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts condenser tissue paper and Electrical grade Insulation Paper, falling within Chapter 48 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from- F

- (a) so much of that portion of the duty of customs leviable thereon, which is specified in the said First Schedule, as in excess of 75 per cent ad valorem; and G
- (b) the whole of the additional duty leviable thereon under section 3 of the second mentioned Act.

(No. 37/F.No. Bud(Cus)/78)." H

A The exemption under the notification was to electrical grade insulation paper falling under Chapter 48. What is an electric grade insulation paper is explained in Encyclopedia a Britannica, volume 12, as under :-

B "Electrical insulation is nonconducting material used to hold electrical conductors in position, separating them from each other and from surrounding structures. Insulation forms a barrier between energized parts of an electric circuit and confines the flow of electric current to wires or other conducting paths as desired. The insulation of electric circuits is a necessary requirement for the successful operation of all electrical apparatus".

C The purpose of insulating material is to form a barrier between energized parts of an electrical circuit. Various types of materials are used as insulation. Paper is one of them. In the same Volume of Encyclopedia Britanica it is mentioned that,

D "paper is used to insulate the small wires of telephone cables and the conductors of high-voltage power cables; in the latter case the paper is impregnated with insulating oil to improve the quality of the insulation".

E In the material in dispute, paper is impregnated with plastic to provide it rigidity and toughness. Since it is used in high voltage electric motions it was electrical grade insulation. The exemption, however, is to such goods falling in Chapter 48 of the First Schedule. It is necessary, therefore, to advert to the Schedule, the relevant Entry in it and the manner in which it should be interpreted. In the scheme of the Customs Act, the rate at which

F any article is subjected to duty is provided by the First and Second Schedules. The First Schedule has sections and chapter. Each chapter has notes, sub-notes and headings. How they should be interpreted is provided for by incorporating internationally recognised rules of interpretation in the beginning of the Schedule. Rule 1 of the Rules for interpretation of the Schedule, as it stood at the relevant period, read as under:-

G "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

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contained. The classification of goods within a Heading shall be determined by applying as between sub-headings the like rules as are applicable between Headings". A

Therefore, the headings in Chapters 39 and 48 have to be determined according to notes. They cannot be ignored. Heading 39.01/06 falls in Chapter 39. It reads as under:- B.

Heading No.	Sub-Heading no. and description of article	Rate of duty - standard
39.01/06	Artificial resins such as condensation, polycondensation, polyaddition, polymerisation and copolymerisation products; artificial plastic materials, silicones; natural resins modified by fusion or esterification such as runs gums or ester gums; regenerated cellulose; chemical derivatives of cellulose; vulcanised fibre; hardened protein: chemical derivatives of natural rubber; other high polymers (including alginic acid, its salts and esters); linoxyn	100%

There is nothing either in the notes or in the heading of 39.01/06 to suggest that it applies to paper coated with plastic. In fact the word such as to amplify the words 'artificial resin' in the heading has not been used before artificial plastic material. Read on its own probably it would have been difficult to include paper laminated with polyester film. But when the notes in Chapter 48 dealing with paper and paper board are examined, then the entire picture changes. Heading 48.01/21 during relevant period read as under:- C
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Heading No.	Sub-Heading No. and description of article	Rate of duty - standard
48.01/21	Paper and paper board, all sourts, whether in rolls, Sheets or cut to size or shape (including cellulose wadding, composite paper or paperboard and impregnated, coated, corrugated, embossed, perforated, surface, coloured or decorated, rule or printed paper paperboard); filter blocks, slabs and plates of paper pulp; building board of wood pulp or	

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A vegetable fibre whether or not bonded with natural or artificial resins or similar binders; stationary made of paper or paperboard; articles not elsewhere specified, of paper, paperboard, paper pulp or cellulose wadding:

B The entry was very wide. It included composite paper and impregnated or coated paper. When the notification No. 37 exempted electrical insulating paper falling under Chapter 48 then it obviously meant that such material fell under the entry. What is electrical insulation material has been explained earlier. The Tribunal in *Wash Udyog* (supra) and *Sunrise* (supra) [latter decision] went on the composition of article and its use and then applied rules of interpretation. In *Wash Udyog* (supra) it was found that the paper contents were 10 mils as compared to the plastic which was 1 mils but held that the goods could not be classified on basis of predominant content but on the basis as to which of the component gave the essential character. It is not necessary to decide whether this reasoning is well founded or not as what was lost sight of by the Tribunal was that the notes to Chapter 48 mentioned that the Chapter did not cover certain items, one of them being mentioned at (e) read as under:-

E "paper-reinforced stratified artificial plastic sheeting, or vulcanised fibre or articles of such materials (Chapter 39)".

F The effect of note (e) was two-fold, one that it excluded such papers which were coated with plastic or laminated with polyester film from heading 48 and other that they were covered in Chapter 39. This exclusion was surprisingly not noticed by any Tribunal. Therefore, paper of the type imported by the appellant which had plastic coatings and were electrical insulating paper was properly subjected to duty under 39.01/06. It may not be out of place to mention that this tariff schedule was amended later. And what was clause (e) in the notes of Chapter 48 in 1978 is now (f). It reads as under:-

G "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 covering of heading No. 48.14 (Chapter 39)".

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It has by implication now included in Chapter 48 paper with coating of plastic if the constitution of plastic was less than half the total thickness. The order of the Tribunal thus is upheld but for different reasons. A

In the appeal filed by Collector (Customs) the learned counsel failed to demonstrate that the order levying counter-vailing duty under Tariff Item 68 suffers from any error of law. B

In the result, both the sets of appeals fail and are dismissed. But there shall be no order as to costs.

T.N.A.

Appeals dismissed.