M/S HINDUSTAN FERODO LTD. A

v.

THE COLLECTOR OF CENTRAL EXCISE, BOMBAY

DECEMBER 4, 1996

[S.P. BHARUCHA AND S.C. SEN, JJ.] B

Central Excise Tariff: Item 22F—Scope of.

Excise Duty—Rings punched from asbestos Boards and Asbestos fabrics—Excise authorities holding that rings fell under Item 22-F—Tribunal upholding the findings of authorities—Evidence led by assessee viz. affidavits of its senior Manager and of a man in the business of asbestos not accepted by Tribunal on the ground that deponents were "not the right persons to give opinion on the type of products"—Appeal against the order of Tribunal—Held, it was wrong of the Tribunal to find that the deponents of affidavits were "not the right persons to give opinion on the type of products"—The onus of establishing that the said rings fell within Item 22-F lay upon the revenue—The Revenue led no evidence—The onus was not discharged—Assuming that the Tribunal was right in rejecting the evidence produced on behalf of the appellants, the appeal should, nonetheless, have been allowed. C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1425 of 1987. E

From the Judgment and Order dated 28.4.87 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. E.D. (SB) (T) A. No. 817 of 1983-B1 F

S. Ganesh, Rajiv Tyagi, U.A. Rana and Sudhanshu Tripathi for Gagrat & Co. for the Appellant.

N.K. Bajpayee, R.S. Rana and P. Parmeswaran for the Respondent.

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The following Order of the Court was delivered:

The articles with which this appeal is concerned are rings punched from asbestos boards and two types of asbestos fabrics, namely special fabrics in a coil of continuous length and M.R. Grey in rolls. The Customs, Excise and Gold (Control) Appellate Tribunal in the order under appeal H

upheld the findings of the authorities below that the said rings fell under Item 22-F of the Central Excise Tariff which, so far as is relevant, reads thus :

> "22-F. Mineral fibres and yarn and manufactures therefrom, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, the following, namely :
>
> xxxx xxxx xxxx
>
> (2) asbestos fibre and yarn:
>
> xxxx xxxx xxxx"

The Tribunal rejected the contention of the appellants that the said rings were intermediate products in the manufacture of brake linings and clutch facings, that they were brittle and fragile, and that they were not marketable. In this behalf the appellants had produced before the Tribunal three affidavits, of which we may refer to two. The one affidavit was made by a Senior Manager, Technical, Sales, in the appellants' employment. He stated on the basis of his experience and knowledge, that M.R. Grey solid woven asbestos rolls had, generally, no industrial application except in the manufacture of woven type brake linings. Also, that special long fibre asbestos rings, being weak and porous, were generally not usable for commercial application other than in the manufacture of moulded clutch facings, after treatment and chemical processing. Before treatment and chemical processing, these rings broke on slight impact and could not withstand friction. Asbestos cloth was impregnated in resin and cured in moulds for making clutch facings. The other affidavit was of a man in the business of asbestos products in a large way since 1957. He stated that he had been shown BFB-9 cut rings and MR-Grey, that he had not dealt therewith, and that, to his knowledge, they were not available in the market. During his time in business not a single customer had either enquired or placed orders for the supply of articles such as the above. The Revenue led no evidence.

The Tribunal referred in the order under appeal, to process drawings and came to the conclusion that the duty was sought to be levied at the fourth stage of manufacture in the appellants factory. The samples of the said rings which were shown to the Tribunal, arose after this stage. They

were in a finished form. There was nothing elementary or crude about them. As asbestos products, they were fully manufactured. Nothing further was required to be done to make them fully manufactured asbestos products. The appellants' contention that the said rings were brittle and fragile articles and hence not marketable "was simply not true. We examined the sample of the rings very carefully. Asbestos fibre is a very strong material. If the ring is allowed to fall on the floor, nothing would happen to it. We found it neither brittle nor fragile. It was perfectly capable of being handled and transported for marketing". In so far as the aforementioned affidavits were concerned, the Tribunal observed that the deponents were "not the right persons to give opinion on the type of the products with which we are concerned in this case. The disputed products are industrial goods. Only industrialists engaged in the manufacture of brake linings and clutch facings would be interested in them, and not a dealer who sells commonly used asbestos products in the market". The Tribunal went on to state, "Any small scale or medium scale manufacturer of brake linings and clutch facings would be interested in buying the asbestos rings and asbestos fabrics as his starting materials. If he does not have the resources to start from the stage one (the asbestos fibre stage).....The fact that the appellants do not sell their asbestos rings and fabrics is immaterial.... the material point is that their asbestos rings and fabrics are marketable products. Though marketable to a particular section of the industry only. ..... The articles in dispute before us are high value finished asbestos products and if the terms offered are right the smaller manufacturer of brake linings and clutch facings would certainly be interested in buying them."

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It is not in dispute before us, as it cannot be, that the onus of establishing that the said rings fell within Item 22-F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, that the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.

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It is not the function of the Tribunal to enter into the arena and make suppositions that are tantamount to the evidence that a party before it has failed to lead. Other than supposition, there is no material on record that suggests that a small scale or medium scale manufacturer of brake linings and clutch facings "would be interested in buying" the said rings or that

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A they are marketable at all. As to the brittleness of the said rings, it was for the Revenue to demonstrate that the appellants' averment in this behalf was incorrect and not for the Tribunal to assess their brittleness for itself. Articles in question in an appeal are shown to the Tribunal to enable the Tribunal to comprehend what it is that it is dealing with. It is not an invitation to the Tribunal to give its opinion thereon, brushing aside the B evidence before it. The technical knowledge of members of the Tribunal makes for better appreciation of the record, but not its substitution.

The Revenue sought to make the said rings dutiable as asbestos articles. The affidavit evidence of a dealer in asbestos was of some C relevance. So was the affidavit evidence that explained the character and use of the said rings. It was wrong of the Tribunal to find that the deponents of these affidavits were "not the right persons to give opinion on the type of products" with which it was concerned.

Regretably, the Tribunal's order under appeal shows that it was not D fully conscious of the dispassionate judicial function it was expected to perform, and it must be quashed.

Learned counsel for the Revenue submitted that the matter be remanded to the Tribunal so that the evidence on record may be reappreciated. As we have stated, no evidence was led on behalf of the E Revenue. There is, therefore, no good reason to remand the matter.

The appeal is allowed and the order under appeal is quashed. No order as to costs.

T.N.A. Appeal allowed.

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