

PETITIONER:
MODI RUBBER LIMITED

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT: 26/08/1997

BENCH:
SUHAS C. SEN, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

THE 26TH DAY OF AUGUST, 1997

Present:

Hon'ble Mr. Justice Suhas C. Sen
Hon'ble Mr. Justice K.T. Thomas

Joseph Vellapally, Sr. Adv., Ms. Amrita Mitra and Amit Bansal, Advs. with him for M/s. JBD & Co. for the appellant R.Mohan, Sr. Adv., R.S. Rana, V.K. Verma and P. Parmeswaram Advs. with him for the Respondents

J U D G M E N T

The following Judgment of the Court was delivered:

J U D G M E N T

SEN, J.

Mode Rubber Limited, the appellant herein, set up a tyre and tube manufacturing plant in 1974. it had a collaboration agreement with a West German Company (hereinafter referred to as "foreign collaborators") who agreed to supply the latest technical know-how and also to guide the appellant in the manufacture of high quality tyres. Some machineries and its components were also supplied by the foreign collaborators. The dispute in this case relates to Polypropylene Liner Fabric (PPLF). According to the appellant, PPLF was supplied by the foreign collaborators for use as Liner components to various machinery units. PPLF is basically a linear Fabric which protect the rubber coated tyre fabric from atmospheric moisture and dust. The Liner Fabric is fed into various machinery units and at each stage, it is rolled with a layer of the Liner Fabric Component in between. This has the effect of protecting and preserving the thickness, surface and elongation etc. during the manufacturing process could not be carried out unless it was used in the various machinery units. It is not a consumable raw material nor does it form part of the finished products like automobile tubes and tyres.

On behalf of the appellant, it has further been contended that the plant and machineries imported by it included PPLF as a part thereof and formed part of "project Import". The appellant's import licence was likewise endorsed. However, the appellant thought that the capital goods import licence might not be adequate to cover all the

requirements of PPLF for setting up of the said factory and applied to the Director General, Trade and Development, for inclusion of PPLF in another import licence for Raw material which was duly allowed.

The grievance of the appellant is that the Customs Department has levied duty at the rate of nearly 305 per cent under Item 53 ICT. The only reason for classifying the goods imported by the appellant under Item 53 ICT was that PPLF had been imported under a separate and subsequent licence and not under the project Import licence. The appellant is aggrieved by the levy of duty under Item 53 ICT on PPLF imported by it. The contention of the appellant is that in the facts of this case, duty should have been levied under item 72(3) ICT as component part of the machinery imported by it and not under Item 53 ICT as "Textile manufactures not otherwise specified". The relevant entries are as under:

"MACHINERIES AND APPARATUS;
ELECTRICAL MATERIAL

72(3). Component parts of machinery as defined in item 72, 72(1) and 72(2) and not otherwise specified, namely, such parts only as are essential for the working of the machine or apparatus and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose but excluding small tools like twist drills and reamers, dies and taps, gear cutters and backsaw blades:

Provided that articles which do not satisfy this condition shall also be deemed to be component parts of the machine to which they belong if they are essential to its operation and are imported with it in such quantities as may appear to the Collector of Customs to be reasonable"

53. Textile manufactures, not otherwise specified."

In the revisional order passed by the Government of India which is now under challenge in this Court, it was held that the term "component part" as defined under item 72(3) ICT referred to such parts only as were essential for the working of the machine or the apparatus and had been given for that purpose some shape or quality which would not be essential for their use for any other purpose. The appellant in its letter to the Assistant Collector of Customs had itself described the goods as "accessory" and had stated that;-

"Polypropylene liner fabric is however not a raw material which goes into the finished product, namely, tyres and tubes."

The Government was of the view that ordinarily "component Part" should go into the assembly of a machinery itself. The Government of India, thereafter, had elaborately discussed the functions of PPLF and came to the conclusion that it was more properly in the nature of an accessory to the equipment. It was further noticed that perform invoice and the list of machineries supplied, forwarded by the appellant to DGTD and CCI and E did not indicate that the

Liner Fabric was a 'component'. It was also noted that the fabric imported by the appellant was in running lengths of different sizes and width. In the form in which they were imported, these fabrics could not be considered as "component parts" of any machine.

On behalf of the appellant, affidavits of some experts were given, Mr. Ram Mohan Rai and Mr. Waldemar Lange filed affidavits to establish that PPLF imported by the appellant was "component of machine".

After taking into consideration the facts of this case as well as the affidavits, it was ultimately held that PPLF imported by the appellant could not be treated as component of the machinery installed by the petitioner.

Having regard to the facts of the case, we are of the view that no error of law has been committed in the revisional order. The appellant had imported plants and machineries. While using the plants and machineries, PPLF was used as a device to protect the rubber coated tyre fabric from atmospheric moisture and dust. PPLF was not a component of the machine itself. It was not a constituent part. It was used as a Liner Fabric not only in tyre production but also in similar other industrial processes. For this finding of fact reliance was placed on the affidavits of Shri Ram Mohan Rai and Shri Waldemar Lange where it was stated that PPLF was used as Liner component of tyre manufacturing machines and in similar other industrial uses.

In Item 72(3), it has been categorically stated that the components imported must have some 'special shape or quality which would not be essential for their use for any other purpose.' The finding of the Tribunal is that PPLF came in various sizes and forms and not in any particular shape suitable for any particular machine. Moreover, it could be used not only in the machines imported by the appellant but also in other similar machines.

Having regard to the facts of this case, we are of the view that the order under appeal does not suffer from any infirmity in law. The appeals are dismissed. No order as to costs.