

PETITIONER:
COLLECTOR OF CUSTOMS, BOMBAY

Vs.

RESPONDENT:
BHOR INDUSTRIES LTD.

DATE OF JUDGMENT 20/04/1988

BENCH:
MUKHARJI, SABYASACHI (J)
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MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 1351 1988 SCR (3) 641
1988 SCC Supl. 418 JT 1988 (4) 726
1988 SCALE (1) 907

ACT:

Customs Tariff Act, 1975: Chapters 28 & 29 & Headings 39.01/06 and 38.01/19(6) - "Plasticizers not otherwise specified" - Interpretation of "Sancticizer 429" - Levy of duty on - Not separately defined chemical compounds.

Statutory Interpretation - Customs and Excise Statutes - Tariff entries - How goods are known in the trade and trade literature - Relevancy of.

HEADNOTE:

The respondents who imported 'Sancticizer 429', contested the levy of duty by the Department and filed a claim for refund, which was rejected by the Assistant Collector on the ground, that on test the product was found to be organic compound (ester-type) of colourless viscose liquid and as per 7.0.046 should be considered a polymeric plasticizer.

On appeal, the Appellate Collector came to the conclusion that Chapter 38 of the Customs Tariff Act 1975 was residuary in nature and that if the item was not covered by any other Chapter of the Tariff Act only then it would fall under the said Chapter. He also found that linear polyesters were covered by CCCN 39.01(E) and that the goods in question are formed by the condensation of dibasic acid within dihydric alcohols and were similar to the polycondensation products of terephthalic acid or adipic acid with ethanediol covered by the aforesaid CCCN headings, which corresponds to 39.01/06 of the Customs Tariff Act, 1975. The Appellate Collector upheld the decision of the Assistant Collector.

The respondent appealed to the Customs Excise and Gold Control Appellate Tribunal which allowed the appeals taking the view that plasticizers were not resins, but are added to resins to impart better flexibility of plastic properties to the latter, that 'Sancticizer 429' is admittedly a plasticizer and would therefore not have fallen for classification under Heading No. 39.01/06 of the Customs Tariff Schedule as it stood before amendment in 1978 and that the product was classifiable

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under heading 38.01/19(6) of the Tariff Act.

Dismissing the Appeals of the Revenue, this Court,

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HELD: 1. As per various technical authorities, plasticizers are not resins. These are added to resins to impart better flexibility or plastic properties to them. These are not plastic materials by themselves either. [644H]

2. The goods under reference in the instant case, are not similar to resols or polysiobutylenes. Their classification under Heading 39.01/06 of the Customs Tariff Act, 1975, prior to and even after its amendment in 1978, should not be applicable. Not being separately defined chemical compounds, these would also not fall within Chapter 28 or 29 of the Act. Since these are not specified elsewhere their appropriate classification would be under Heading No. 38.01/19(6) as "Plasticizers, not elsewhere specified". [645C]

3. In these matters how a good is known in the trade and treated in the trade literature is relevant and significant and often decisive factor. [645D]

"Encyclopaedia of Chemical Technology" 3rd Edition page 111 referred to.

Bhor Industries Ltd. v. Collector of Customs, Bombay, [1984] 18 E.L.T. 521 and Collector of Customs, Bombay v. Bhor Industries Ltd. and another, [1985] 21 E.L.T. 291 approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 392-95 of 1988.

Appeal under Section 130E(b) of the Central Excise and Salt Act, 1944 from the order dated 15.12.1986 of the Customs Excise and Gold (Control)-Appellate Tribunal, New Delhi in Appeal Nos. C/2130 to 2132/86-C & 1027/83 and order No. 757-760/86.

B. Datta, ASG, Mrs. Indira Sawhney and P. Parmeshwaran for the Petitioners.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. These appeals under Section

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130E(b) of the Customs Act 1962 (hereinafter called the Act) are against the order dated 15th December, 1986 passed by the Customs, Excise and Gold (Control, Appellate Tribunal (hereinafter called CEGAT). These appeals are related to a dispute regarding the duty of custom imposed on the respondent. The department had levied duty on the product known as 'Sancticizer 429' imported by the respondent. The respondent had contested this duty and filed a claim for the refund. The Assistant Collector of Customs rejected this claim. The Assistant Collector on test found it to be organic compound (easter-type) inform of colourless viscose liquid and as per 7.0.046m should be considered as polymeric plasticizer. The Appellate Collector found that Chapter 38 of the Customs Tariff Act, 1975 was residuary in nature. According to him, if the item was not covered by any other chapter of the Customs Tariff Act, 1975 then it would fall under Chapter 38. The Appellate Collector further found that linear polysters were covered by CCCN 39.01(E). The Appellate Collector held that the impugned goods are formed by the condensation of diabasic acid within dihydric alcohols and were similar to the poly condensation product of terphthalic acid or Adipic acid with ethanediol covered by above mentioned CCCN headings. The Appellate Collector held this CCCN headings corresponds to 39.01/06 of the

Customs Tariff Act, 1975. The Appellate Collector upheld the decision of the Assistant Collector. The respondent challenged the aforesaid order of the Appellate Collector before the Tribunal. The Tribunal allowed the appeals relying on the two decisions of the Tribunal one being *Bhor Industries Ltd. v. Collector of Customs, Bombay*, [1984] 18 E.L.T. 521 and the other *Collector of Customs, Bombay v. Bhor Industries Ltd. and another*, [1985] 21 E.L.T. 291. The Tribunal was of the view that the product was classifiable under the heading 38.01/19(6) of the Customs Tariff Act. The decision of the Tribunal was later on followed by the subsequent decision referred to hereinbefore.

In *Bhor Industries Ltd. v. Collector of Customs, Bombay* (supra), the Tribunal observed that these are ordinarily liquids and, in rare instances, solids, as simple high boiling solvents for the polymers. These are neither resins nor do they seem to be plastic materials; on the other hand, these are added to resins to impart better flexibility or plastic properties to them. It was further observed that there was no evidence had been produced before the Tribunal to show that Sancticizer was a resin or plastic material as defined in Explanatory Notes to C.C.C.N. It was neither similar to resols or polysiobutylene to attract the mischief of Note 2(c) to Chapter 39 nor a separately defined Chemical Compound so as to fall within Chapters 28 or 29 of 644

Customs Tariff Act, 1975. Hence, it was classifiable not under Heading 39.01/06 as it stood before its amendment in 1978 but under 38.01/19(6) of Customs Tariff Act, 1975 as "plasticizer, not elsewhere specified".

The Tribunal in its decision considered the technical leaflet on the product. Sancticizer 429 was described as a medium-high molecular polyester plasticizer made from a glycol reacted with a dibasic acid. Among the properties claimed for the product are good low temperature flexibility, excellent electrical properties, outstanding migration resistance, humidity, stability and resistance to oil and solvent extraction. It is said to be an excellent plasticizer for making oil-resistant high temperature PVC wire and cable compounds. It is also stated to be useful for plasticizing ethyl cellulose, nitrocellulose, acrylic caulking compounds, and adhesive systems based upon polyvinyl acetate, styrene-butadiene, and acrylic latices. Reference was also made to Kirk-othmer's "Encyclopaedia of Chemical Technology" 3rd edition page 111, where it was observed as follows:

"A plasticizer is incorporated in a material to increase its workability, flexibility, or distensibility. Addition of a plasticizer may lower the melt viscosity, the second-order transition temperature, or the elastic modulus of the plastic. For effectiveness with polymeric materials, a plasticizer needs to be initially mixed with the polymer either by dissolution of the resin in the plasticizer or the plasticizer in the resin, by heat or dissolving both in a common solvent and subsequent evaporation of the solvent. In "Plastics materials" (4th edition, page 80), J.A. Brydson refers to plasticizers-ordinarily liquids and in rare instances solids-as simply high boiling solvents for the polymer. The action is explained by saying that plasticizer molecules insert themselves between polymer molecules reducing but not eliminating polymer-polymer contacts and generating additional free volume;

also as some interaction between polymers and plasticizers off setting the spacing effect; or both."

The Tribunal came to the conclusion that plasticizers were not resins; these are added to resins to impart better flexibility or plastic properties to the latter. Nor did they seem to be plastic materials by themselves. The Tribunal found that Sancticizer 429 which is admittedly a plasticizer would, therefore, not have fallen for classification

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under Heading No. 39.01/06 of the Customs Tariff Schedule as it stood prior to its amendment in 1978.

The said reasoning was reiterated by the Tribunal in the decision of Collector of Customs, Bombay v. Bhor Industries Ltd. and another. There, the Tribunal observed that as per various technical authorities, plasticizers are not resins. Rather, these are added to resins to impart better flexibility or plastic properties to them. These are not plastic materials by themselves either. Further, goods under reference are not similar to resols or polysiobutylenes. Therefore, their classification under Heading 30.01/106 of the Customs Tariff Act, 1975, prior to and even after its amendment in 1978, should not be applicable. Furthermore, not being separately defined chemical compounds, these would also not fall within Chapter 28 or 29 of the Act. Since these are not specified elsewhere, their appropriate classification would be under Heading No. 39.01/19(6) as "Plasticizers, not elsewhere specified".

It is well-settled in these matters how a good is known in the trade and treated in the trade literature is relevant and significant and often decisive factor.

In that view of the matter, the Tribunal was right in the view it took. These appeals fail and are accordingly dismissed.

N.V.K.

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Appeals dismissed.