

PETITIONER:
DUNLOP INDIA LTD.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT 01/12/1989

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
PUNCHHI, M.M.

CITATION:
1990 AIR 439 1989 SCR Supl. (2) 370
1989 SCC Supl. (2) 699 JT 1989 (4) 431
1989 SCALE (2) 1294

ACT:

Central Excises and Salt Act, 1944.. Sections 4 and 36--Tariff Item No. 16A(2)--Notifications Nos. 71 of 1968 and 27 of 1973 Tread repair compound, cushion repair compound and cover compound--Use to which these are put--Levy of excise duty--Whether exempted.

HEADNOTE:

The appellant-assessee has been manufacturing cushion repair compound, tread repair compound and cover compound. According to the assessee, these were not meant either for resoling or retreading of tyres, but for mending injured and defective sections of tyres. Though normally these goods are dutiable under tariff item No. 16A(2), the assessee claimed exemption from duty under Notification No. 71 of 1968 dated 1.4.68. The Superintendent rejected the claim.

On appeal by the assessee, the Collector observed that there was no evidence that the goods in question should not be used for the resoling or retreading of tyres and rejected the claim. The assessee preferred a revision to the Central Govt. The Central Govt. while rejecting the Revision Petition, referred to the fact that the notification specifically excluded cushion compound, cushion gum and tread gum. As regards cover cushion compound, it observed that the composition was such that its use for repair of conveyor belts was indistinguishable from the other use of resoling of tyres.

This appeal has been filed against the order of the Central Govt. The appellant contended that the Government had overlooked the fact that while tread repair, cushion compound and tread gum are items used for resoling or retreading of tyres, that was not the use to which the articles manufactured by the assessee were put. Since the fact that the goods manufactured by it were employed only for repairing tyres and conveyor belts was not disbelieved, it was argued, the assessee was eligible for the exemption claimed by it.

Allowing the appeal, this court,

HELD: 1. The notification of 1978 only reproduces with some
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modifications the notification of 1964. The broad purport of

both the notifications is to exempt rubber products other than those which are commonly sold under certain descriptions and are used for the resoling or retreading of tyres. The circular of 1966, which can be considered as a contemporaneous exposition of the understanding of the Government while issuing the exemption notification of 1964, makes it clear that at that time, it was not intended to deny exemption to rubber products used merely for repair purposes. The notification of 1973 was one in which various amendments were carried out to a series of notifications relating to various items and does not contain anything to suggest that it was only a clarification that was intended to be given and not a prospective amendment of the previous notification. [375A-C]

2.1 The fact that the appellant is using or marketing the products for use, only for reparing tyres and conveyor belts is not controverted. Hence the appellant assessee was entitled to exemption under the notification. In one sense, any rubber compound has a composition which theoretically permits it to be used either for repair purposes or for resoling or retreading of tyres. But the assessee's claim is that the product marketed by it has not the physical dimensions or technical properties to be capable of use for retreading or resoling. Also, the notification talks of products "used for" resoling and retreading of tyres; and it is not so in the instant case. [375C-E]

2.2 The notification imports a limitation on the exclusion from the exemption specified in the paranthetical clause of the notification. That exclusion is only in respect of compounds used for resoling or retreading. [375E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 469 of 1975.

From the Order dated 31.5.1974 of the Government of India, Ministry of Finance, Department of Revenue and Insurance, New Delhi, in Order No. 615 of 1974 on Central Excise Revision Application.

Dr. Y.S. Chitale, Ms. M. Ray and H.K. Dutt for the Appellant.

V.C. Mahajan, (N.P.), P. Parmeshwaran and R.P. Srivastava for the Respondents.

K .R. Nambiar for the Intervener.

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The Order of the Court was delivered by RANGANATHAN J. The appellant-assessee manufactures goods known in the market as cushion repair compound, tread repair compound and cover compound. These materials, according to the assessee, are used to mend injured and defective sections of tyres and are not meant to be used either in the resoling or in retreading of tyres. Under the Central Excise & Salt Act, 1944, ('the Act'), the above goods were normally dutiable under tariff item No. 15A (2). However, the assessee claimed exemption from duty under notification No. 71 of 1968 dated 1.4.1968. By this notification under section 8 of the Act, the Central Government exempted "all rubber products, in the form of plates, sheets and strips unhardened, whether vulcanised or not, and whether combined with any textile material or otherwise (other than the products which are made either wholly or partly of rubber and which are used for the resoling or retreading of tyres, including the products commonly known as tread rubber, camel back, cushion compound, cushion gum, tread gum

and tread packing strips) falling under sub-item (2) of this item, from the whole of the duty of excise leviable thereon". The Superintendent of Central Excise having rejected the claim for exemption and charged the goods in question to duty at 20% (basic) under the tariff item above mentioned, the assessee preferred an appeal to the Collector of Central Excise, West Bengal. The Collector also rejected the claim observing that there was no evidence that the goods in question could not be used for the resoling or retreading of tyres. The assessee thereupon preferred a revision to the Central Government under section 36 of the Act as it then stood. In the revision petition, it was pointed out that tread repair compound and cushion repair compound were primarily meant for and also used as repair material only with reference to the treads and cushions of tyres and that since they were designed to serve the limited purpose of mending small sections of tyres it would be grossly erroneous to hold that these repair materials could be used in place of tread rubber or camel back which only have the necessary physical dimensions and technical properties to serve as retreading and resoling material. Similarly cover compound, it was said, was material which was used only for repairing conveyor belting and was also marketed by the assessee solely for the purpose of repairing damaged sections of the conveyor belting. It was not meant for use in retreading and resoling of tyres since their sole intended use was to repair conveyor belts. The Central Government, however, dismissed the revision petition by its order dated 21.5.1974. The Government referred to the fact that the

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notification of exemption specifically excluded cushion compound, cushion gum and tread gum and observed that, in view of this, cushion repair compound and tread repair compound would also be assessable to duty under item No. 16A. So far as cover compound was concerned, it was observed that its composition was such that its use for repair of conveyor belts was indistinguishable from the other use of resoling of tyres. The present appeal has been preferred from the order of the Central Government.

On behalf of the appellant it is pointed out that the whole purpose of the exemption notification was to exclude products which were used for the resoling and retreading of tyres. The Government has overlooked that while tread rubber, cushion compound and tread gum are all items used for resoling or retreading of tyres, that was not the use to which the articles manufactured by the assessee were put. The statement of the assessee that the goods manufactured by it were employed only for repairing tyres and conveyor belts has not been disbelieved. It is therefore submitted that the Government erred in holding that the goods produced by the assessee are not eligible for the exemption in question.

In support of his contention, learned counsel for the appellant relied on two important circumstances. One is that by a notification No. 27 of 1973 dated 1.3.1973, notification No. 71 of 1968 was amended and the words "used for resoling, retreading or repairing of tyres" was substituted for the words "used for the resoling or retreading of tyres". This amendment was not effective for the period with which we are concerned and it is therefore argued that the compounds used for repairing as against resoling or retreading will not be covered by the exclusion in the exemption notification. The second circumstance relied upon by the learned counsel for the appellant is this. Earlier, there was a notification No. 31 of 1964 under which the duty leviable in respect of latex foam sponge as well as products

commonly known as tread rubber or camel back including cushion compound, cushion gum, tread gum, and tread packing strips were subjected to a concessional rate of duty while other rubber products falling under item 16A were granted an exemption from the levy of duty. In the context of that notification, a question arose as to whether rubber products which are capable of being used for retreading or resoling of tyres but are only used for repairs would attract duty or not. The position was clarified by the Central Board of Excise and Customs in its circular no. Rubber 1/66 dated 7.2.1966. The relevant part of the circular reads as follows:

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"2. Those rubber products which are not 'latex foam sponge' may be excisable under the said tariff item No. 16A but would not attract Central Excise duty unless commonly known as per description given in Column 2 against S. No. 2 of the table to the above cited notification. While the scope of the levy on the rubber products thus gets very much restricted, it may so happen that different brand names are given by different manufactures to the same or similar product giving rise to the question whether or not a particular product can be deemed to be commonly known as 'tread rubber', 'camel back', 'cushion compound', 'cushion gum' etc., so as to attract duty.

3. Doubts of the above nature should not in fact arise in view of para 6 to the 1962 Budget instructions. It was made quite explicit therein that 'item is ... fairly comprehensive as to wording but the intention ... is to subject only 'latex foam sponge' and the rubber products popularly known as 'tread rubber' or camel back' used for the resoling or retreading of tyres to duty. That being the intention a rubber product which is neither 'latex foam sponge' nor used for the resoling or retreading of tyres is classifiable as 'all other products' and therefore exempt from whole of the duty leviable thereon under S. No. 3 of the Table to the above cited notification.

4. It is possible that some of the rubber products are capable of being used for retreading or resoling of tyres. Mere capacity does not, however, attract duty in the absence of normal usage in that manner being established it would not be appropriate to hold that the products are dutiable.

5. Rubber products used for repair of tubes or tyres also, in view of what has been stated above, does not attract duty.

6. Pending cases regarding assessment of rubber products may be finalised accordingly".

Learned counsel submits that the above interpretation is equally applicable in the context of notification No. 71 of 1968.

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We are of opinion that the appellant's contention is well founded. The notification of 1978 only reproduces with some modifications the notification of 1964; however, the broad purport of both the notifications is to exempt rubber products other than those which are commonly sold under

certain descriptions and are used for the resoling or re-treading of tyres. The circular of 1966, which can be considered as a contemporaneous exposition of the understanding of the Government while issuing the exemption notification of 1964, makes it clear that, at that time, it was not intended to deny exemption to rubber products used merely for repair purposes. The notification of 1973 was one in which various amendments were carried out to a series of notifications relating to various items and does not contain anything to suggest that it was only a clarification that was intended to be given and not a prospective amendment of the previous notification. As already mentioned, the fact that the appellant is using or marketing the products for use, only for repairing tyres and conveyor belts is not controverted. In these circumstances, we are of opinion that the appellant assessee was entitled to exemption under the notification. In one sense, any rubber compound has a composition which theoretically permits it to be used either for repair purposes or for resoling or retreading of tyres. But the assessee's contention is that the product marketed by it has not the physical dimensions or technical properties to be capable of use for retreading or resoling. Also, the notification talks of products "used for" resoling and retreading of tyres and that is not the case here. The notification thus imports a limitation on the exclusion from the exemption specified in the parenthetical clause of the notification. That exclusion is only in respect of compound used for resoling or retreading.

For the reasons mentioned above we allow this appeal and set aside the order of the Central Government under section 36 of the Central Excise Act as well as the orders of the subordinate authorities and hold that the assessee is entitled to the exemption prayed for. The concerned assessment will be modified accordingly. We however make no order as to costs.

G.N.
allowed.
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Appeal