

PETITIONER:
INARCO LIMITED

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE

DATE OF JUDGMENT: 20/09/1996

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
VENKATASWAMI K. (J)

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

BHARUCHA. J

This appeal against the judgment and order of the Customs, Excise & Gold (Control) Appellate Tribunal, concerns the classification of "aprons" and "cots".

Aprons and cots are manufactured by the appellants. They are components of textile machinery. Synthetic rubber is the raw material for their manufacture and it is subjected to a series of processes, including extrusion and vulcanisation. At one stage of the manufacturing process unhardened tubes emerge. These are cut to the small lengths ordered by the appellants' customers, and are aprons and cots.

The appellants paid excise duty on aprons and cots under Tariff Item 16 A. On 29th August, 1967, an exemption notification was issued, whose benefit the appellants claimed. Consequently, the appellants paid no excise duty on aprons and cots until the year 1980. On 24th September, 1980, a notice was issued to the appellants which required them to show cause why aprons and cots should not be classified under the residuary Tariff Item 68. The appellants contention to the contrary was accepted. On 18th January, 1982, the Collector of Central Excise issued to the appellants a notice under Section 35 A(2) of the Central Excises and Salt Act, 1944, requiring them to show cause why the order of the Assistant Collector should not be reviewed and set aside. The appellants contention that aprons and cots were classified under Item 16A was rejected and they were classified under Item 68. The appellants carried the matter in appeal to the Tribunal. The Tribunal affirmed the order of the Collector, but restricted the demand to the date of his show cause notice.

Item 16A reads thus :

Item No.	Tariff Description	Rate of Duty
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(1)	(2)	(3)
16A	Rubber Products, the following namely :- 1) Latex foam sponge.	fifty-five per cent ad-valorem
Explanation : This sub-item includes articles made of latex foam sponge.		
2)	Plates, sheets and strips unhardened whether vulcanised or not, and whether combined with any textile materials or otherwise.	Thirty-five per cent ad-valorem
3)	Piping and tubing of unhardened vulcanised rubber.	Twenty-five percent ad-valorem
4)	Transmission, Conveyor or elevator belts or belting of vulcanised rubber."	

Item 68, so far as it is relevant, reads thus :

Item No.	Description of Goods	Rate of Duty
68	All other goods, not elsewhere specified, manufactured in a factory but excluding -	One per cent

The relevant portion of the said Exemption Notification reads thus:

"In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts piping and tubing of unhardened vulcanised rubber, falling under sub-item (30 of Item No. 16A and specified in column 92) of the Table below from the whole of the duty of excise leviable thereon. :-

TABLE

Serial No.	Description
3.	Piping and tubing designed to be or converted in the factory of its production into component parts of machinery articles (including typewriters) provided such component parts do not perform the function of conveying air, gas or liquid.

Mr. A.M. Setalvad, learned counsel for the appellants, submitted that aprons and cots were classifiable under Item 16A because they were "piping and tubing of unhardened vulcanised rubber". Being specifically covered under this item, the residuary Item 68 had no application.

Reliance was placed upon the judgment of this Court in Bharat Forge & Press Industries (P) Ltd. vs. Collector of Central Excise, 1990 (45) E.L.T. 525, where the appellants made pipe fittings such as elbows and bends by cutting steel pipes and tubes into different sizes, giving them shape and turning them into pipe fittings by heating in a furnace, hammering and pressing. They claimed that these pipe fittings fell within Item 26AA(iv) of the Tariff, which read as follows :

"Pipes and tubes (including blanks

therefor) all sorts, whether rolled, forged, spun, cast, drawn, annealed, welded or extruded".

This Court held that unless the Excise authorities could establish that the pipe fittings could no conceivable process of reasoning be brought under any of the tariff items, resort could not be had to the residuary item. Item 26AA(iv) encompassed all sorts of pipes and tubes, and it was of no consequence how they were manufactured. In order to achieve fully the purpose for which the pipes and tubes were manufactured, it was necessary to manufacture smaller pieces of pipes and tubes and also to manufacture them in such a shape that they might be able to conduct liquids and gases, passing them through and across angles, turnings, corners and curves or regulating their flow in the manner required. Smaller pieces of pipes and tubes differently shaped were manufactured for this purpose. They were merely intended as accessories or supplements to the larger pipes and tubes. There was no change in their basic physical properties or their end use. There was no reason why they could not be described as pipes and tubes. In the circumstances, it was different to say that pipe fittings, though they might have a distinctive name in the market, were not pipes and tubes. The use of the words "all sorts" and the reference to the various processes by which the excisable item could be manufactured were comprehensive enough to sweep within their fold these goods.

Mr. Setalvad submitted that even if it be found that aprons and cots were correctly classifiable under Item 68, the benefit of the said exemption notification should be extended to them because they were "piping and tubing designed to be or converted in the factory of production into component parts of machinery" and they did not perform the function of conveying air, gas or liquids.

In that behalf our attention was drawn to the judgment of this Court in Jain Engineering co. vs. Collector of Customs, Bombay, 1987 (32) E.L.T. 3(S.C.). This was a case relating to rod bushes and camshaft bushes and the question was whether the appellants, who made them, were entitled to the benefit of an exemption notification. The notification provided that articles specified in column (2) of the Table thereof and falling under Heading 84.06 were exempt from payment of a certain portion of customs duty. Column (2) of the Table not only mentioned internal combustion piston engines, undoubtedly forming the only subject matter of Heading 84.06, but it also mentioned other parts thereof. Heading 84.06 did not refer to the parts of such engines. The non-mention had given rise to the controversy. This Court said that it was clear that the exemption to internal combustion piston engines but also to parts thereof. When the intention was clear and manifest, it was unreasonable to take a narrow view of the notification and not to extend its benefit to parts of the engines referred to in Heading 84.06. To accept the contention of the Excise authorities that since Heading 84.06 did not mention the parts, the notification was inapplicable to the parts would be to amend the notification, which the Court would not do.

Mr. J. Vellapally, learned counsel for the Excise authorities, stressed the phraseology of Item of piping and tubing of unhardened vulcanised rubber and not to small parts thereof. He drew attention to the fact that where the intention was to refer to smaller parts, the item had specifically done so; thus, in sub-item (4) 'Transmission, Conveyor or elevator belts or belting' were spoken of. Mr. Vellapally, drew attention in this behalf to judgment of

this court in Collector of Customs vs. K. Mohan & Co. Exports, 1989 (43) E.L.T 811, where the contention on behalf of the assessee that film rolls of indefinite length and not in the form of individual cut pieces were more appropriately described as "sheetings", not "sheets", was accepted. Mr. Vellapally submitted that under the terms of the said exemption notification piping and tubing covered by Item 16A was exempt if it was designed to be used or converted in the factory of its production into component parts of machinery. The intention, in his submission, was to levy excise duty on the machinery and exempt from excise duty the piping and tubing made into component parts of the machinery. Aprons and cots did not fall under Item 16A. They were also not eligible to the exemption given by the said exemption notification.

In our view, aprons and cots being cut pieces of long lengths of tubes or pipes are outside the scope of Item 16A; "piping and tubing", as used therein, refers to lengths of pipes or tubes.

The judgment in the case of Bharat Forge & Press Industries (P) Ltd. dealt with the entry which in terms referred to "all sorts" of pipes and tubes, by whatever means manufactured. It was, therefore, that this Court held that the item was comprehensive enough to take within its fold the pipe fittings made by the assessee.

The said exemption notification applies to piping and tubing of unhardened vulcanised rubber that falls under sub-Item (3) of Item 16A. The sweep of the exemption notification cannot be increased by the Court to cover goods that do not fall under Item 16A.

The Judgment in the case of Jain Engineering Co. dealt with an exemption notification that gave to articles mentioned in column(2) of the Table thereof and falling under Heading 84.06 exemption from payment of certain portion of customs duty. Column (2) of the Table mentioned internal combustion piston engines and parts thereof. Heading 84.06, however, referred to internal combustion piston engines but not to parts thereof. The Courts declined to accept the contention of authorities that the benefit of the exemption notification could not be given to parts of internal combustion piston engines because parts were not covered by Heading 84.06. To do so, it said, would be to amend the exemption notification, which the Court would not do.

The Court in the case of Jain Engineering Co. read the exemption notification as it stood. We also read the said exemption Notification as it stands may not amend it.

The appeal is dismissed with costs.