

PETITIONER:
COLLECTOR OF CENTRAL EXCISE, SHILLONG

Vs.

RESPONDENT:
WOOD CRAFT PRODUCTS LTD.

DATE OF JUDGMENT 20/03/1995

BENCH:
VERMA, JAGDISH SARAN (J)
BENCH:
VERMA, JAGDISH SARAN (J)
BHARUCHA S.P. (J)
PARIPOORNAN, K.S.(J)

CITATION:
1995 SCC (3) 454 JT 1995 (3) 207
1995 SCALE (2) 364

ACT:

HEADNOTE:

JUDGMENT:

J.S. VERMA, J.,

1. The main question for decision in these appeals and the connected matters is whether "block boards" are to be classified under Heading No. 44.08, Sub-heading No. 4408.90 as claimed by the revenue or under Heading No. 44.10, Sub-heading No. 4410.90 as claimed by the manufacturers of block boards. The controversy relates to three periods, namely, from 28.2.1986 to 19.3.1990, from 20.3.1990 to 28.2.1992 and from 1.3.1992 onwards. The division into three periods is on account of the fact that an amended Chapter Note 5 in Chapter 44 was introduced w.e.f 19.3.1990 on account of the controversy which had been raised about the classification of block boards and, thereafter, w.e.f 1.3.1992 a second amend

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ment was made in Chapter Note 5 on account of the surviving controversy even after the amendment made w.e.f. 19.3.1990. These appeals and the connected matters relate to these three periods.

2. For the first period, the Tribunal held in the main judgment dated 18.10.1989 reported in 1992 (60) E.L.T. 668 that block board does not fall within Heading No. 44.08, Sub-heading 4408.90 and the more appropriate classification would be under Heading No. 44.10, Sub-heading No. 4410.90. This decision being in favour of the manufacturers, the appeals relating to this period are by the revenue. For the second period writ petitions filed by the manufacturers in the Gauhati High Court were allowed by the judgment dated 23.3.1993 reported in 1993 (66) E.L.T. 345 Arunachal Forests Products Ltd. vs. Union of India. Civil Appeal Nos. 39774020/94 are by the revenue against that decision. For the third period, the writ petitions filed by the manufacturers in the Gauhati High Court have failed being dismissed by the judgment dated 17.3.1993 and the

manufacturers have challenged that decision.

3. At the outset, the competing headings with reference to which the question has to be decided may be quoted. They are as under:-

"44.08	Plywood, veneered panels and similar laminated wood	
4408.10	Marine plywood and aircraft plywood	30%
4408.20	Plywood for tea-chests when cut to size in panels or shocks and packed in sets	30%
4408.30	Decorative plywood -	
4408.40	Cuttings and trimmings of plywood of width not exceeding 5 centimeters	Nil
4408.90	Others	30%
44.10	Articles of wood not elsewhere specified	20%
4410.10	Flush door	30%
4410.90	Others	12%

With effect from 19.3.1990, amended Chapter Note 5 in Chapter 44 was introduced which read as follows:-

"5. For the purposes of heading No. 44.08 the expression 'similar laminated wood' includes block board, laminated board and batten board, in which the core is thick and composed of blocks, laths or battens of wood glued together and surfaced with the outer plies and also panels in which the wooden core is replaced by other materials such as a layer or layers of particle board, fibre board, wood waste glued together, asbestos or cork."

Thereafter with effect from 1.3.1992 a second amendment was made in Chapter Note 5 after which it read as follows:

"5. For the purposes of heading No. 44.08 the expression 'similar laminated wood' includes block board, laminated board and batten board, in which the core is thick and composed of blocks, laths or battens of wood glued or otherwise joined together and surfaced with the outer plies

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and also panels in which the wooden core is replaced by other materials such as a layer or layers of particle board, fibre board, wood waste glued together, asbestos or cork. "

4. "Block board" has not been expressly specified in any entry. The revenue contends that "block board" is covered by the expression "similar laminated wood" in the heading "Plywood, veneered panels and similar laminated wood" of Heading No. 44.08 and, therefore, falls under the sub-heading No. 4408.90 "other" which is the residuary Sub-heading. On the other hand, the manufacturers of block board contend that it is an "article of wood" and, therefore, falls under heading "articles of wood not elsewhere specified" of Heading No. 44.10, Sub-heading No. 4410.90 "other" which is the residuary entry since it is not "similar laminated wood". The basis of the rival contentions is that according to the manufacturers such an indication flows from the ISI Glossary of Terms, while according to the revenue the structure of the central excise tariff in the Central Excise Tariff Act, 1985 is the adoption of a detailed central excise tariff based broadly

on the system of classification derived from the International Convention called the Brussels' Convention on the harmonised Commodity Description and Coding System (Harmonised System of Nomenclature called "HSN") with the necessary modifications. The revenue contends that the expression "similar laminated wood" in Heading No. 44.08 expressly includes block board, laminated wood and batten board, in which the core is thick and composed of blocks, laths or battens of wood glued or otherwise joined together and surfaced with the outer plies as clarified by the amendment in Chapter Note 5 which was always the meaning of the expression "similar laminated wood" according to HSN. The revenue, contends that this is how the expression was always understood in the HSN which is the pattern adopted while enacting Central Excise Tariff Act, 1985. According to the revenue, the ISI Glossary of Terms being for a different purpose is not the appropriate aid to construction of these headings in the Central Excise Tariff Act. The revenue contends that the amendments made in Chapter Note 5 were only with a view to clarify this position and end the controversy which was raised by the manufacturers relating to construction of these headings in the Act. On this basis, the revenue urges that the Tribunal's decision relating to the first period from 28.2.1986 to 19.3.1990 reported in 1992 (60) E.L.T. 668 and of the High Court for the second period from 20.3.1990 to 28.2.1992 reported in 1993 (66) E.L.T. 345 deserve to be reversed maintaining the decision of the High Court for the third period from 1.3.1992 onwards which is against the manufacturers. It is obvious that in the event of the revenue succeeding in respect of the first period, it must follow that the revenue must succeed for the other two periods also. It is equally obvious that for the third period from 1.3.1992 onwards, in view of the clear wording of the amended Chapter Note 5 w.e.f 1.3.1992, the question is beyond controversy since the expression "glued or otherwise joined together" has been added in Chapter Note 5 to make it beyond controversy that block boards of all kinds fall within the expression "similar laminated wood".

5. It is significant that Heading No. 44.12 of the HSN is the same as Heading No. 44.08 of the Indian Tariff and reads "Plywood, veneered panels and similar laminated wood".

The explanatory notes on the HSN indicate the meaning of the expression "similar laminated wood" as under:-

"Similar laminated wood. This group can be divided into two categories:

Block board, lamin board and batten board, in which the core is thick and composed of blocks, laths or battens of wood glued together and surfaced with the outer plies. Panels of this kind are very rigid and strong and can be used without framing or backing."

6. It is clear that if the expression "similar laminated wood" in the Indian Tariff is understood as it meant under the HSN on which pattern the Central Excise Tariff Act is based, then block boards of all kinds would fall within the expression "similar laminated wood". This is how the amended Chapter Note reads expressly. The question is whether it can be so read even for the earlier periods particularly the first period before amendment of Chapter Note 5 to expressly include block board in the expression "similar laminated wood".

7. The ISI Glossary contains the following definitions:-

"Laminated wood-An assembled product made up of layers of wood and adhesive in which the grains of adjacent layers are parallel.

Block board A board having a core made up of strips of wood, each not exceeding 25 nun in width, laid separately or glued or otherwise joined to form a slab which is glued between two or more outer veneers with the direction of the grain of the core blocks running at right angles to that of the adjacent outer veneers (See Fig.).

8. The Tribunal has taken the view that the block boards manufactured by these manufactures do not conform to the definition of "laminated wood" given in the ISI Glossary. It further held that the block boards are similar to "flush doors" and, therefore, the more appropriate classification is under Heading No. 44.10 which specifies the flush doors as a specific category and other articles of wood not elsewhere specified would fall under the residuary sub-heading No. 4410.90. Reliance was placed on the definitions in the ISI Glossary.

9. After the amendment made in Chapter Note 5 w.e.f 19.3.1990 for the period from 20.3.19W to 28.2.1992, the High Court in 1993 (66) E.L.T. 345 placed reliance similarly on the ISI Glossary to hold that where no artificial means by way of glue or metal fastener is used to hold the blocks together and where the blocks of woods are separately laid, they are "otherwise joined together" to form a slab and, therefore, such block boards could fall under Heading No. 44.08, sub-heading No. 4408.90 in the light of Chapter Note 5 as amended from 1.3.1992 but in the absence, of the words as or otherwise joined" from Chapter Note 5 as introduced w.e.f 19.3.1990, only block boards in which the core is composed of blocks of woods "glued together" would fall under Heading No. 44.08, Subheading No. 4408.90 during the second period between 20.3.1990 to 28.2.1992. In other words, for the second period the High Court took the view that the only block boards in which blocks of wood are put together by applying adhesive or glue, in between, could fall under Heading No. 44.08, Sub-heading No. 4408.90 in view 214

of Chapter Note 5 as introduced w.e.f 19.3.1990 prior to its further amendment w.e.f 1.3.1992. After the further amendment made in Chapter Note 5 w.e.f. 1.3.1992 by enlargement of the expression "glued together" to "glued or otherwise joined together", the High Court for the third period commencing from 1.3.1992 held that all kinds of block boards whether glued together or joined and kept in place by any other mode fall under the Heading No. 44.08, Sub-heading No. 4408.90.

10. Having heard learned counsel for the parties, we are satisfied that the contention of the revenue must be accepted with the result that the decision of the Tribunal reported in 1992 (60) E.L.T. 668 for the first period and that of the High Court reported in 1993 (66) E.L.T, 345 for the second period must be reversed, while the decision dated 17.3.1993 of the High Court against the manufacturers for the third period commencing from 1.3.1992 must be affirmed.

11. The Statement of Objects and Reasons of the Central Excise Tariff Bill, 1985 which led to the enactment of the Central Excise Tariff Act, 1985 is indicative of the pattern of the structure of the central excise tariff enacted therein. It reads as under:

"Central Excise duty is now levied at the rates specified in the First Schedule to the

Central Excises and Salt Act, 1944. The Central Excises and Salt Act, 1944 originally provided for only 11 items. The number of Items has since increased to 137. The levy, which was selective in nature, to start with, acquired a comprehensive coverage in 1975, when the residuary Item 68 was introduced. Thus, barring a few Items like opium, alcohol, etc., all other manufactured goods now come under the scope of this levy.

2. The Technical Study Group on Central Excise Tariff, which was set up by the Government in 1984 to conduct a comprehensive inquiry into the structure of the central excise tariff has suggested the adoption of a detailed central excise tariff based broadly on the system of classification derived from the international Convention on the Harmonised Commodity Description and Coding System (Harmonised system) with such contractions or modifications thereto as are necessary to fall within the scope of the levy of central excise duty. The Group has also suggested that the new tariff should be provided for by a separate Act to be called the Central Excise Tariff Act.

3. The tariff suggested by the Study Group is based on an internationally accepted nomenclature, in the formulation of which all considerations, technical and legal, have been taken into account. It should, therefore, reduce disputes on account of tariff classification. Besides, since the tariff would be on the lines of the Harmonised System, it would bring about considerable alignment between the customs and central excise tariffs and thus facilitate charging of additional customs duty on imports equivalent to excise duty. Accordingly, it is proposed to specify the Central excise tariff suggested by the Study Group by a separate tariff Act instead of the present system of the tariff being governed by the First Schedule to the Central Excises and Salt Act 1944.

4. The main features of the Bill are as follows :-

(i) The tariff included in the Schedule to the Bill has been made more detailed and comprehensive, thus obviating the need for having a residuary tariff Item. Goods of the same class have been grouped together to enable parity in treatment

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5. The Bill seeks to achieve the above objects.

(emphasis supplied)

12. It is significant, as expressly stated, in the Statement of Objects and Reasons, that the central excise tariffs are based on the HSN and the internationally accepted nomenclature was taken into account to "reduce disputes on account of tariff classification". Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of central excise tariff

in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore,, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI.

13. A comparison of Chapter 44 in the Central Excise Tariff Act 1985 and the corresponding chapter in the HSN (Harmonised System of Nomenclature) of the Customs Cooperation Council (CCC) shows that they are, similar. Heading No. 44.08 of the Indian Tariff is "Plywood, veneered panels and similar laminated wood" which is identical to Heading No. 44.12 of the HSN. For this reason, the expression "similar laminated wood" in the identical heading in the Indian tariffs and the HSN should have the same meaning since the pattern of the Indian tariff of the classification made therein is based on the HSN. The explanatory note in the HSN expressly includes block board in "similar laminated wood". the word used in the expression is "similar" and not "same" which means that the block board to be included in this heading need not be the same as laminated wood but similar to it. The ISI Glossary of Terms defines "laminated wood" and "block board" separately to indicate that block board is not included in the definition of "laminated wood" for the purpose of ISI. On the other hand, HSN in the explanatory note expressly says that block board is "a similar laminated wood" wherein the core is thick and composed of blocks, and surfaced with outer plies. All kinds of block boards answer this description being comprised of the core composed of blocks which are joined together and surfaced with outer plies. This is the basic requirement according to the explanatory note in the HSN to make the article "similar laminated wood". The process by which the core composed of blocks is kept together 'in place' to form the core between the outer plies is not significant for classification of the article as block board. The fact that all kinds of block boards irrespective of the manner in which the blocks composing the core are kept together in place are known as block boards, makes this evident. It is clear that any article having a core composed of blocks of wood kept together in place between outer plies is a block board and block

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board is included within the expression "similar laminated wood" for the purpose of bringing it within the heading "Plywood, veneered panels and similar laminated wood" which is Heading No. 44.08 in the Indian tariff as it is in Heading No. 44.12 of the HSN.

14. The mere fact that on account of the dispute raised by the manufacturers, Chapter Note 5 was amended w.e.f. 19.3.1990 to bring it in line with the corresponding explanatory note in the HSN and the expression "glued together" used therein was enlarged by a further amendment therein w.e.f. 1.3.1992 to read "glued or otherwise joined together" does not indicate that block board was not included in the expression "similar laminated wood" in Heading No. 44.08 as it stood from the beginning. It is significant that no amendment was made in the Heading and that the amendment was made only in the explanatory note. The exercise of amendment of Chapter Note 5 was ex abundante cautela merely to clarify and make explicit that which was

implicit earlier in the expression "similar laminated wood" since the identical heading was lifted from the HSN wherein an explanatory note existed, including block board in the expression "similar laminated wood". In our opinion, the express provision made for "flush doors" in Heading No. 44.10, Subheading No. 4410.10 is no indication, in the context, that block board must be classified as an article of wood not elsewhere specified under Heading No. 44.10, Subheading No. 4410.90 "others". It merely means that "flush door" being expressly classified under Heading No. 44.10, Subheading No. 4410.10, is taken out of the ambit of "similar laminated wood" in Heading No. 44.08 leaving the rest included in that expression untouched. AL do not think that the specification of "flush door" under Heading No. 44.10, Subheading No. 4410.10 has the effect of also excluding block board from "similar laminated wood" in Heading No. 44.08, Subheading No. 4408.90.

15. The meaning of the expression "similar laminated wood" in the heading "Plywood, veneered panels and similar laminated wood" given in the explanatory note to the HSN for Heading No. 44.12 therein, identical to Heading No. 44.08 in the Indian tariff is also in accord with the general meaning of the relevant words used in that expression. The heading means that it covers 'plywood' and "veneered panels" together with all kinds of "similar laminated wood". In other words, treating "plywood" or "veneered panels" as "laminated wood", it covers all kinds of laminated wood bearing any resemblance with "plywood" or "veneered panels". The word "similar" is expansive and not restrictive like "same". Thus, some resemblance with "plywood" or "veneered panels" is enough provided the article can be treated as "laminated wood". The sweep of the heading is, therefore, wide and resort to the residuary heading No. 44.10 is to be had only when a liberal construction of the wide heading No. 44.08 cannot accommodate "block board" within it.

16. The significant words are "plywood", "veneered panels" and "laminated wood" with reference to the meaning of which, the ambit of Heading No. 44.08 has to be determined. In the Oxford Encyclopedic English Dictionary, the meanings given are:

Plywood a strong thin board consisting
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of two or more layers glued and pressed together with the direction of the grain alternating. "

"Blockboard a plywood board with a core of wooden strips."

"Lamination the manufacture by placing layer on layer. "

The New Encyclopaedia Britannica, Volume 19, Macropaedia, under the heading "Forestry and Wood Production", in the section "Wood Utilization" at pages 420-21 states -

"Veneer. Veneer is a thin layer, or sheet, of wood that is uniform in thickness....

xxx xxx xxx

"Plywood and laminated constructions. Plywood and laminated constructions are glued-wood products. Although gluing is an old art, practiced since ancient times the modern development of various products was made possible by the improvement of glues especially by the production of synthetic resin adhesives.

Plywood is a panel product manufactured by gluing together one or more veneers to both

sides of a veneer solid wood, or reconstituted wood core (...). In the case of solid-wood-core plywood and reconstituted-wood-core plywood, an additional intermediate step is the production of cores, which are made by lateral gluing of blocks or strips of wood or by gluing oriented wood chips or flakes with adhesives.

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xxx          xxx          xxx
"Another important glued product is laminated
wood..."

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17. In Vol., 7, Micropaedia, at page 123, it says -
"Lamination, in technology, the process of building up successive layers of a substance such as wood or textiles, and bonding them with resin to form a finished product. Laminated board, for example, consists of thin layers of wood bonded together;....."

18. The meaning of the significant words and description of the wood products as intermediate materials meant for manufacture of final products clearly indicate that "laminated wood" means a wood product prepared by placing layer on layer and "block board" is a plywood board with a core of wood. Any plywood board with a core of wood in which there are layers, one above the other is, therefore, laminated wood similar to plywood or, veneered panels. It is "similar laminated wood" included in the heading "Plywood, veneered panels and similar laminated wood". Similarity with, and not identity with plywood or veneered panels is required. In *Nat Steel Equipment Private Ltd. vs. Collector of Central Excise*, 1988 (34) E.L.T. 8 (S.C.), while considering the meaning of the word "similar" in a tariff item, in similar context, it was stated thus:

"..... The expression "similar" is a significant expression. It does not mean identical but it means corresponding to or resembling to in many respects; like; or having a general likeness. statute does not contemplate that goods classed under the words of 'similar description shall be in all respects the same. If it did these words would be unnecessary. These were intended to embrace goods but not identical with those goods....."

(at page 10)

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This test is satisfied. Thus, the meaning given to the expression "similar laminated wood" in the HSN is not any special meaning thereof but the general meaning as understood internationally in the field of "Forestry and Wood Production".

19. We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the central excise tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression "similar laminated wood" in the same context of

classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian tariff of a different intention.

20. In our opinion, the expression "similar laminated wood" in Heading No. 44.08 as it stood from the beginning must be construed to include within it block board of all kinds so that the amendment in Chapter Note 5 w.e.f 19.3.1990 and w.e.f 1.3.1992 merely clarified and explicit that which was implicit in the heading throughout. These amendments were obviously made to end the dispute raised by the manufacturers by an express statement. Any further discussion with reference to the definitions in the ISI Glossary is unnecessary for the reason already indicated.

21. The result is that the decision of the Tribunal reported in 1992 (60) E.L.T. 668 and that of the High Court in 1993 (66) E.L.T. 345 are reversed, while the decision of the High Court dated 17.3.1993 for the third period commencing from 1.3.1992 is affirmed even though for different reasons given herein.

22. Consequently, all the appeals of the revenue are allowed while the appeals and SLPs of the manufacturers are dismissed. No costs.

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