

PETITIONER:
COLLECTOR OF CENTRAL EXCISE, BOMBAY

Vs.

RESPONDENT:
M/S K.W.H. HELIPLASTICS LIMITED

DATE OF JUDGMENT: 12/01/1998

BENCH:
J.S. VERMA, B.N. KIRPAL, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

V.N.KHARE, J.

These two appeals are directed against the order dated 12.8.92 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as the 'tribunal'), whereby the tribunal allowed the respondent's appeals holding that the tanks and vats manufactured by the assessee would be classified under sub-heading 3926.90 of the schedule to the Central Excise Tariff Act, 1985 as "other articles of plastics" and not under heading 39.25 and sub-heading 3925.10 as "builders ware" of plastics.

The facts of the case, briefly sated, are these :

The respondent herein is engaged in business of manufacture of vessels, chemical tanks, reaction vessels, pipes and gobar gas plants. On a surprise inspection of the respondent's factory by the Central Preventive Unit of the Central Excise Department it was found that the respondent's unit was engaged in manufacture and sale of reservoir tanks etc. without payment of excise duty. Earlier, the respondent claimed exemption from licensing control by declaring the goods manufactured by them being goods covered by sub-heading 3926.90 of the Central Excise Tariff Act. The Excise authorities being of the opinion that there was suppression of material facts in the declaration given by the respondent with the purpose of evading duty, 22 tanks/reservoirs manufactured by the respondent were seized. Consequently, a show-cause notice dated 16.1.1989 was served upon the respondent, whereby the assessee was directed to show cause why duty amounting to Rs. 4,97,883 towards the goods cleared by them be not demanded and recovered under rule 9(2) of the Rules read with proviso to Section 11(A) of the Act. In response to the said show cause notice, the respondent submitted its explanation wherein it was stated that the goods manufactured by them were exempt from payment of duty as the same fall under sub-heading 3926.90 as "other articles of plastics". The Additional Collector or Central Excise, Bombay held that heading 39.25 covers not only plastic tanks used in the construction of building, but also in the construction of industrial plants. The explanation of

the respondent that the heading 39.25 should be given the restricted meaning and confined to the reservoir used in construction of building was rejected. On the question of application of extended period of limitation contained in proviso to Section 11(A) of the Act for the purpose of raising demand, the Additional Collector held that since the respondent had misled the department into believing that these were articles of plastics falling under sub-heading 3926.90 and that, they had deliberately suppressed the facts that the goods manufactured by them are actually storage tanks, the demand raised by the department deserved to be confirmed.

Being aggrieved, the respondent preferred Appeal No E/8153/88-C against the order confirming the demand raised by the Department and imposing penalty, besides confiscating 182 plastic reservoirs, inter alia, contending that the goods manufactured by them are classifiable under sub-heading 3926.90 as against sub-heading 3925.10 and that the demand of duty beyond the period of six months is barred by time. The respondent also preferred Appeal No. 3104/90C before the Tribunal against the order of the Collector (Appeals) setting aside the approval of the classification list by the Assistant Collector. Since both the appeals raised common question of facts and law, they were heard and decided together by the tribunal. The tribunal held that for the goods to be classified under sub-heading 3925.10 as "builders ware of plastics" not elsewhere as specified included, it was necessary for the department to establish that the reservoir/tanks, Vats and similar containers manufactured by the respondent were essentially "builders ware". The tribunal further held that since no evidence was produced by the department to establish that the goods manufactured by the respondent were essentially "builders ware", their classification under sub-heading 3925.90 would be appropriate. Consequently, both the appeals were allowed by the impugned order.

The foremost question that arises for consideration in these appeals is, as to whether the goods manufactured by the respondent fall under sub-heading 3925.10 of the Tariff or they fall under sub-heading 3926.90, as "other articles of plastics" and were exempt from duty.

Before we answer the question, it is necessary to reproduce the relevant heading, sub-heading and description of the goods occurring in classification list contained in Chapter 39 of the Act.

Heading 39.25

Heading No.	Sub-heading No.	Description of goods	Rate of duty
39.25		Builders ware of plastics, not elsewhere specified or include	
	325.10	Reservoirs, tanks vats and similar containers, of a capacity exceeding 300 litres.	30%
		'Other articles of plastics'	
Heading No.	Sub-heading No.	Description of goods	Rate of duty
29.26		Other articles of plastics and articles of other materials of heading Nos.3901 to 39.14	

3926.90

Other

30%

The case of the respondent before the Tribunal was that they are supplying tanks and vats to industrial plants and just because of usage for industrial purpose, such tank and vats cannot be classified under heading 39.25 of the classification list. The Tribunal, while accepting the case of the respondent, held that in the absence of any evidence, that tanks and vats manufactured by the respondent are purchased and used by the builders while constructing building, they do not answer the description "builders ware" under the main heading 39.25. This approach of the Tribunal was not legally correct. It was admitted before the tribunal by the respondent that they have been selling tanks and vats to the government department etc. for purpose of water storage and supply. This admission unambiguously indicates that these tanks and vats can be used and are capable of being used for water storage either plant. The term "building ware" is not defined anywhere and as such, a controversy arose before the Tribunal whether the tanks and vats manufactured by the respondent would fall under heading 39.25, as "builders ware of plastics, not elsewhere specified or included" or, plastics". Under such circumstances, it would have been more appropriate for the Tribunal to have applied Rules of Interpretation of the Excise Tariff, rule a whereof provides that the goods which cannot be classified in accordance with rules 1.2 and 3 of the Rules, they shall be classified under heading appropriate to the goods to which they are most akin.

Apparently, rules 1,2 and 3 not applicable for resolving the dispute and, as such, what was required to be done by the Tribunal in the present case was, to find out the relationship of goods manufactured by the respondents with the description of goods under disputed headings of the classification list, as contended by the parties. The relationship of goods with particular heading depends upon the description, purpose and use of the goods. Note 11(a) of Chapter 39 at the Act, provides that heading 39.25 applies also to reservoir, tanks, including septic tank, vats and similar containers. The purpose and use of these goods is to hold liquids or something in liquid form in process of manufacture as in tanning and dyeing etc., and thus can be used and are capable of being used of water storage in connection with raising of construction or mixing construction materials. It is not disputed that the goods manufactured by the respondent are tanks and vats. The description and usage of tanks and vats manufactured by the respondent tallies with the description of goods given in Note 11(a) of Chapter 39 at the Act. We, therefore, find relationship between the goods manufactured by the respondent with the heading 39.25. Once it is established that the description of the goods manufactured by the respondent are akin to description of goods given under heading 39.25 and sub heading 3925.10, there is no difficulty in holding that the tanks and vats manufactured by the respondent would fall under heading 39.25 of the Tariff. We accordingly hold that tanks and vats manufactured by the respondent are classifiable as "builders ware of plastics" and the view taken by the Tribunal that the classification of goods, i.e., tanks and vats would be appropriate under sub-heading 3926.90 of the classification list, and are exempt from excise duty, is erroneous.

It was then contended on behalf of the respondent that these appeals deserved to be remanded to the Tribunal for deciding the question as regards the application of extended period of limitation. It is true that since both the appeals

of the respondent were allowed by the Tribunal on the ground that the goods manufactured by the respondent are classifiable under sub-heading 3926.90, there was no occasion for the Tribunal to deal with the question of extended period of limitation. Under such circumstances, we feel that this question required to be considered by the Tribunal.

We accordingly set aside the orders of the Tribunal and remit the appeals to the Tribunal for deciding the question relating to application of proviso to Section 11A of the Act in the present case. The appeals are allowed accordingly. There shall be no order as to costs.

JUDIS