

PETITIONER:
FENNER (INDIA) LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, MADURAI

DATE OF JUDGMENT 28/03/1995

BENCH:
BHARUCHA S.P. (J)
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BHARUCHA S.P. (J)
AHMADI A.M. (CJ)
PARIPOORNAN, K.S. (J)

CITATION:
1995 SCC Supl. (2) 567 JT 1995 (3) 388
1995 SCALE (2) 508

ACT:

HEADNOTE:

JUDGMENT:
BHARUCHA, J.:

1. These appeals impugn the order dated 14th September, 1989, passed by the Customs, Excise and Gold (Control) Appellate Tribunal dismissing the appeals filed before it by the two appellants. Each of the two appellants manufactures PVC impregnated cotton conveyor belting and PVC impregnated flame resistant colliery conveyor belting. The appellants contended before the Tribunal that their products were classifiable under Tariff Entry 3922.90, whereas it was the case of the Excise authorities that they were classifiable under Tariff Entries 3920.11 or 3920.12, depending upon whether they were rigid or flexible strips. The Tribunal upheld the contentions of the Excise authorities basing itself, in the main, upon the dictionary meaning of "strip" and upon the judgment of this Court in Geep Flashlight Industries Ltd. vs. Union of India and ors., 1985 22 E.L.T.

3.
2. We are concerned in these appeals for the period December 1986 to June 1987.

3. With effect from 28th February 1986 and upto 9th February 1987, Tariff Heading 39.20 (so far as is relevant) read thus:

"39.20 Other plates, sheets, film, foil and strip, of plastics, non-cellular, whether lacquered or similarly laminated, supported or similarly combined with other materials or not of polymers of vinyl chloride:

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3920.11 Rigid plates, sheets, film, foil
and strip 60%
3920.12 Flexible plates, sheets, film
foil and strip 60%"

Tariff Heading 39.22 read thus:

"39.22 Other articles of plastics and articles of

materials of heading Nos.39.01 to 39.14
3922.10 -Articles of polyurethane foam

75%

3922.90 - Other 30%"

30%"

4. It is relevant to mention that the Central Excise Tariff Act, 1985, itself contains for the interpretation of the tariff schedules. Rule 1 states, "The titles of Sections and Chapters are provided for case of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the provisions hereinafter contained". Rule 2(a) states that any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that the incomplete or unfinished goods have the essential character of the complete or finished goods. Rule 3 states that when goods are prima facie classifiable under two or more headings, classification will be effected thus: the heading which provides the most specific description shall be preferred to headings providing a more general description. Also, when goods cannot be classified by reference to sub-rules (a) or (b) of Rule 3, they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration. Rule 4 states that goods which cannot be classified in accordance with Rules 1 to 3 shall be classified under the heading appropriate to the goods to which they are most akin. Chapter 39 is entitled "plastics and articles thereof" and Note 11 therein states that Heading No.39.22 applies, inter alia, to "(k) Transmission, conveyer or elevator belts, endless, or cut-to-length and joined end to end, or fitted with fasteners."

5. Subsequent to 10th February 1987 Tariff Heading 39.22 became Tariff Heading 39.26; it read:

"39.26 Other articles of plastics and articles of other materials of heading Nos.39.01 to 39.14

3926. 10- of polyurethane foam
60% plus Rs.40 per
Kilogram

3926.90	Other	30% ¹¹
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6. Note 11 (K) omitted. Reference was made by Mr. V. Laxmi Kumaran, learned counsel for the appellants, to the Customs cooperation Council publication of the Explanatory Notes to the Harmonized Commodity Description and Coding Systems which is adopted in the Tariff Schedule. The explanatory Note with reference to Tariff Heading 39.26 of the Harmonised Coding System states that it covered "articles, not elsewhere specified or included, of plastics..... or of other materials of headings 39.01 to 39.14" and included "(7) Transmission, conveyor or elevator belts, endless, or cut to length and joined end to end, or fitted with fasteners."

7. The Tribunal observed from copies of the customer's orders placed before it by the appellants that the length of the belt-

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ing in rolls varied from 100 meters to 400 metres, the width varied from 600 millimetres to 1200 millimetres and the thickness varied between 7 mm and 9.5 mm. Considering the length, width and thickness of the belting, the Tribunal concluded that it fell within the term "strip", as meaning a long narrow piece according to the Concise Oxford Dictionary. The name given to the product by the appellants

was "belt/belting". Customers placed orders under this name. But, according to the Tribunal, the belt/belting was covered by the general dictionary meaning of "strip". The Tribunal found that the belting was not exclusively an article of plastics and it noted that in the case of Geep Flash Industries Ltd. (ibid) this Court had observed that articles of plastics did not mean articles made from plastic and other materials.

8. The Dictionary of Mechanical Engineering, Third Edition, published by Butterworths defines belt, thus :

"belt (belting: driving band) An endless band of leather or other flexible material for transmitting power from one shaft to another by running over flat, convex or grooved rim pulleys. Belts may be flat, vee-shaped or ribbed to fit on to appropriately shaped pulleys. But velocities may be as high as 800 m/s (15000 ft. min), See also anti static belting; open belt, etc."

9. Mr. V. Laxmi Kumaran laid stress on the Rules for the interpretation of the Tariff Schedule hereinabove referred to and urged that, by reason thereof, classification had to be determined "according to the terms of the headings and any relative Section or Chapter Notes." Emphasis was laid upon Chapter Note 11 which specifically stated that Tariff Heading 39.22 applied to conveyor belts. In regard to the Tariff as it obtained after 10th February, 1987, Mr. V. Laxmi Kumaran relied upon the Explanatory Note to Tariff Heading 39.26, in identical terms in the Harmonised Coding System which was the basis of the present Tariff Schedule. It expressly stated that Tariff Heading 39.26 included conveyor belts. Mr. Laxmi Kumaran submitted that, in these circumstances, the conveyor belts manufactured by the appellants could only be classified under Tariff Entry 39.22.90 and 39.26.90 for the respective periods.

10. Mr. V. Gauri Shankar Murthy, learned counsel for the Excise authorities, submitted that the belting manufactured by the appellants was properly classifiable under Tariff Heading 59.08, which relates to impregnated, coated, covered or laminated textile fabrics and textile articles of a kind suitable for industrial use. In this behalf he sought to draw our attention to the description of the manufacturing process given by the appellants in the first appeal in their memorandum of appeal. He submitted that it was permissible for the Excise authorities to take this stand because in the show cause notice issued to the appellants in the first appeal " it had been stated that it was issued without prejudice to the stay order granted by the Madras High Court in the writ petition filed by the appellant in the first appeal.

11. It appears that is show cause notice dated 2nd September 1986 had been issued by the Excise authorities to the appellant in the first appeal proposing to classify its belting under Tariff Heading 59.08. The show cause notice was impugned in the writ petition filed in the Madras High Court. The Madras High Court granted stay

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of further proceedings in pursuance of the notice. Thereupon the show cause notice dated 11/12th June 1987 was issued, without prejudice to the stay order aforementioned, seeking to classify the belting under Tariff Entries 39.20.11 or 39.20.12. When the writ petition reached hearing, however, learned counsel for the Excise authorities stated on instructions that they would classifying the belting under Tariff entries 39.20.11 or 39.20.12, a revised

show cause notice in that behalf would be issued and further action on the show cause notice dated 2nd September, 1986, which was impugned in the writ petition, had become unnecessary. The High Court recorded the statement and dismissed the writ petition as unnecessary. Having regard to the statement made on behalf of the Excise authorities before the Madras High Court that they would seek to classify the belting of the appellant in the first appeal under Tariff Entries 39.20.11 or 39.20.12 and not under 59.08, on which statement the High Court acted and dismissed the writ petition as unnecessary, it is not open to the Excise authorities to urge that the belting is classifiable under Tariff Heading 59.08.

12. As regards the appellant in the second appeal, the excise authorities at all times sought to assess its belting under Tariff Entries 39.20.11 or 39.20.12 and never under Tariff Heading 59.08. It is impermissible for the Excise authorities to urge for the first time before this Court that the belting of the appellant in the second appeal must be classified under Tariff Heading 59.08.

13. We have, therefore, declined to permit learned counsel for the Excise authorities to advance any argument relative to Tariff Heading 59.08.

14. Learned counsel for the Excise authorities then submitted that he had nothing to add to what had been stated by the Tribunal in the order under appeal.

15. The Tribunal's reliance upon the judgment of this Court in the case of Geep Flashlight Industries Ltd. , in our opinion, misplaced. The court was there concerned with the interpretation of tariff item read by itself. It had not to be read in the light of terms of headings or relative Section or Chapter Notes. This Court held that plastic torches were not articles made of plastic. Articles made of plastic meant articles made wholly of the commodity commercially known as plastic and not articles made from plastic and other materials. In the instant case the Tariff Schedule contains rules for its interpretation which require that "for legal purposes classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes..... The Notes relative to Chapter 39 state that Heading 39.22 for the earlier period applies to conveyor belts. For the earlier period Tariff Heading 39.26 must, therefore, be read as applicable to the appellants conveyor belts. For the later period, the Explanatory Note to Tariff Heading 39.26 in the Harmonised Coding System, which is identical to Tariff Heading 39.26 of the Tariff Schedule, must be taken to be a guide, for the Tariff Schedule is based upon the Harmonised Coding System. That apart, we are unable to uphold the Tribunal's finding that the belting made by the appellants is a "strip". An article which is over 100 metres but only upto 1200 millimeters in width cannot be described as a "strip". Tariff Entries 39.20.11 and 39.20.12 cannot, there-

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fore, be made applicable to the belting made by the appellants. For the later period, Tariff Heading 39.26 must be read as applicable to it.

16. The appeals, therefore, succeed. The judgment and order under appeal is set aside. The respondents are directed to classify the appellants' conveyor belts under Tariff Heading 39.22.90 for the period December 1986 to 9th February 1987 and under Tariff Heading 39.26.90 for the period 10th February 1987 to June 1987.

17. The respondents shall pay to the appellants the costs of the appeals.

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JUDIS