

The Collector Of Central ... vs M/S. Bakelite Hylam Ltd. Etc on 10 March, 1997

Equivalent citations: AIR 1997 SUPREME COURT 1988, 1997 AIR SCW 1763, (1997) 91 ELT 13, 1997 (3) ADSC 516, 1997 (10) SCC 350, (1997) 3 JT 639 (SC), 1997 (2) SCALE 732, (1997) 2 SCR 825 (SC), (1997) 69 ECR 193, (1997) 2 SCALE 732, (1997) 4 SUPREME 49

Author: Sujata V. Manohar

Bench: A.M. Ahmadi, Sujata V. Manohar

PETITIONER:

THE COLLECTOR OF CENTRAL EXCISE, HYDERABAD

Vs.

RESPONDENT:

M/S. BAKELITE HYLAM LTD. ETC.

DATE OF JUDGMENT: 10/03/1997

BENCH:

A.M. AHMADI, SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

THE 10TH DAY OF MARCH, 1997 Present:

Hon'ble the Chief Justice Hon'ble Mrs. Justice Sujata V. Manohar M.S.Usgaonkar, Additional Solicitor General, D.A. Dave, Harish N. Salve, Sr.Advs. Dhruv Mehta, Dalip Tandon, V.K.Verma, A.Subba Rao, P. Parmeswaran, Ms. Janki Ramachandran, Ms. Meenakshi Arora, (Devan Parikh, Ms. Ruby Ahuja,) Advs. for Ms. M. Karajawala, V. Lakshmi Kumaran, V. Sridharan, V. Balachandra, Ravinder Narain, Ms. Amrita Mitra, M.L. Lahoty, Amit Bansal, Pawan Sharma, Himanshu Shekhar, Rajiv Tyagi,

U.A. Rana, S. Tripathi, C.N. Sree Kumar, Ms. Indu Malhotra, V.L. Francis, and P.I. Jose, Advs. with hem for the appearing parties.

J U D G M E N T The following Judgment of the Court was delivered:

(with C.A.Nos. 1228/91, 1229/91, 7086/95, 6593-6594/94, 4702/90, 2554-55/89, 3182-3202/90, 4886/90, 2898/91, 3050/32, 3251/95, 438/91, 2491/92 and 9001/96) **J U D G M E N T** Mrs. Sujata V. Manohar, J.

These appeals, which are at the instance of the Collector of Central Excise, raise common questions regarding the classification of laminated sheets. There varieties of laminated sheets are involved in these appeals: (1) Decorative laminated sheets;

(2) Industrial laminated sheets which are paper based and; (3) Glass Epoxy laminated sheets.

The manufacturing process of decorative laminated sheets has been described by the manufacturers. Paper is passed through or immersed in a resin bath (phenol formaldehyde resin) so that the paper is impregnated with resin. This paper is then dried. At this stage the paper which is impregnated with resin is known as 'Prepreg - P' ('P' stands for paper). Layers of Prepreg paper are then stacked. The top layer consists of paper which has a decorative design on it an which is impregnated with resin. The sheets of papers so stacked are then pressed together in a hydraulic press applying pressure and heat to make a laminated sheet. In the process, the resin passes through the pores of paper and acts as a binder. The end product is a hard rigid sheet which is impact resistant and is unaffected by hear or moisture. These decorative laminated sheets are sold in the market and they are commonly used for surfacing of furniture.

In the case of industrial laminates which are paper based, the process of manufacture is similar except that the paper which is used is electrical grade kraft paper. These industrial laminates are used as electrical insulators.

In the case of glass epoxy laminates instead of paper, glass fabric is impregnated with resin and dried (Prepeg-G). Several layers of resin impregnated glass fabric-Pepreg-G are pressed together in a hydraulic press applying heat and pressure in order to produce glass epoxy laminated sheets. These are also used as electrical epoxy laminated sheets. These are also used as electrical insulators.

The dispute in these appeals relates to the correct classification of these products under the Central Excise Tariff as applicable at the material time. The classification lists which are the subject matter of these appeals relate to the period 1983 to 1989 (approx).

The classification lists prior to 28.2.1986 are governed by the First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as the 'Old Tariff').

With effect from 28.2.1986 the Central Excise Tariff Act, 1985 came into force. Hence the classification lists after 28.2.1986 are governed by the Central Excise Tariff Act, 1985 (hereinafter referred to as the 'New Tariff'). There have been some changes in the relevant Tariff Entries under the Central Excise Tariff Act of 1985 from 1.3.1988. The description of the material tariff entries for our purposes, however, has not been affected by the changes made in the Central Excise Tariff Act of 1985 with effect from 1.3.1988, except for a change in the number of the entry. OLD TARIFF:

Under the Old Tariff, the two competing entries in the First Schedule are Entry 15A(2) and Entry 68. Entry 15A(2) at the material time was as follows :

"15A: Artificial or Synthetic resins and plastic materials, and other materials and articles specified below:

(1) Condensation, Polycondensation and polyaddition products....

(2) Articles of materials described in sub-item (1), the following namely :-

Boards, sheeting, sheets and films, whether lacquered metallised or laminated or not; lay flat tubings not containing any textile materials."

Entry 68 which is a residuary entry, is as follows:

Item No.	Description of goods	Rate of Duty
----------	----------------------	--------------

6.	All other goods, not elsewhere specified,	Twelve per cent but excluding- cent ad valorem
----	---	--

(a) Alcohol, all sorts, including alcoholic liquors for human consumption;

(b) Opium, Indian hemp and other narcotic drugs and narcotics; and

(c) dutiable goods as defined in section 2(c) of the Medical and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).

Explanation:- For the purpose of this item, goods which are referred to in any preceding item in this Schedule for the purpose of excluding such goods from the description of goods in that item (whether such exclusion is by means of an Explanation to such item or by words of exclusion in the description itself or in any other manner) shall be deemed to be goods not specified in that item."

According to the Excise Authorities, all these laminated sheets which are manufactured by the respondents are sheets of plastic material falling under Tariff Entry 15A(2) of the Old Tariff. The manufacturers, on the other hand, contend that the laminated sheets cannot be considered as sheets of plastic material. The sheets are made up of composite material consisting of either paper or glass fabric as also resins. Hence these sheets are not covered by Entry 15A(2). They would fall under the residuary Entry

68. The claim of the manufacturers has been upheld by CEGAT. Hence these appeals have come before us.

Entry 15A(2) deals the articles of materials which are described in sub-item(1). The material which is described in sub-item(1) falls under the category of artificial or synthetic resins and plastic materials. The different products and processes by which they are derived are described in sub-entry (1). Sub-entry (2) describes Articles of this material in different forms such as boards, sheeting, sheets, films, whether lacquered or metallised or laminated or not and lay flat tubings. This entry does not refer to any composite material or composite article which consists not merely of artificial or synthetic resins and plastic materials but also such material in combination with other materials such as paper or glass fabric in the present case.

In the case of Geep Flashlight Industries Ltd. V. Union of India (1985 [22] ELT 3 SC), this Court considered Tariff Entry 15A(2) as it stood at the relevant time. The entry as follows:-

"15A(2):

Articles made of plastics, all sorts, including tubes, rods, sheets, foils, sticks, other rectangular or profile shape whether laminated or not and whether rigid or flexible including lay flat tubings and polyvinyl chloride sheets....

This Court said that a mere reference to Tariff Item No. 15A(2) would show that articles described there are plastic material in different shapes and forms and not articles made from such plastic material. There is a noticeable difference between plastic material in different shapes and form such as tubes, rods, sheets etc. and articles made from such plastic materials such as a plastic torch. This Court further held that articles made of plastic "refer to articles made wholly of commodity commercially known as plastics and not articles made from plastics along with other material. The interpretation, which this Court put on Entry 15A(2) in the above case will apply equally to Entry 15A(2) set out earlier which was thus modified subsequently and with which we are concerned. The basic wording of Entry 15A(2), namely, "articles of material described in sub-item(1), the following" is similar to the original wording "Articles made of plastic all sorts". The description which follows: boards, sheeting, sheets, films etc. in Entry 15A(2) as applicable here, also refers to plastic material in different shapes and forms. This entry does not deal with a composite commodity which may consist of plastics or materials described in sub-item (1) of Entry 15A, combined with other material. Therefore, the ratio of this Court's decision in the case of Geep Flashlight Industries Ltd. (supra) applies directly to Entry 15A(2) as applicable here. A composite material such as we have to consider, will not be covered by Entry 15A(2).

In the case of Wiltech India Ltd. v. C.C.E. (1996 [84] ELT p.5 SC), this Court held that a razor made of plastic with an iron rod would fall under Tariff Item 68. Razors which are not wholly made of plastic would not qualify for exemption under Notification

No. 182/82-CE.

As laminated sheets are not made wholly of material described in Entry 15A(1), the CEGAT has rightly held that under the Old Tariff, laminated sheets in question cannot be classified under Tariff Entry 15A(2). They are to be classified under the residuary Entry 68.

NEW TARIFF:

After the coming into force of the Central Excise TARIFF Act of 1985, however, the tariff entries have undergone substantial change.

According to the Central Excise Authorities, decorative laminates fall under tariff entry 3920.31/3920.37 of the New Tariff. (N.B. the second number is the new number of the relevant tariff entry by reason of the amendments made in the New Tariff with effect from 1.3.1988). The manufacturers/respondents claim that decorative laminates are classifiable under tariff entry 4818.90/4823.90 (the latter being the new number of the tariff entry with effect from 1.3.1988). The claim of the manufacturers has been upheld by CEGAT. This is challenged before us by the Excise Authorities.

For the correct interpretation of the New Tariff some relevant factors have to borne in mind. The Statement of object and Reasons accompanying the Central Excise Tariff Bill, 1985 which later became the Central Excise Tariff Act, 1985 which later became the Central Excise Tariff Act, 1985, inter alia, states: "The Technical Study Group on Central Excise Tariff which was set up 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.' Hence for the interpretation of the New Tariff harmonised system of nomenclature and its explanatory notes are relevant. In the case of Collector of Central Excise, Shillong v. Wood Crafts Products Ltd. 91995 [3] SCC 452), this Court, while considering the Central Excise Tariff Act of 1985, has held that looking to the Statement of Objects and Reasons the Central Excise Tariff under the 1985 Act is based on the Harmonised System of Nomenclature (HSN) and the internationally accepted nomenclature has been adopted to reduce disputes on account of tariff classification. Accordingly, for resolving any dispute relating to tariff classification, the internationally accepted nomenclature emerging from the HSN is a safe guide, this being the expressly acknowledged basis of the structure of the Central Excise Tariff in the 1985 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.

In addition the New Tariff Act has specifically laid down Rules of Interpretation which govern the interpretation of various entries in it. Each chapter in the New Tariff Act further contains its own Notes which are relevant for the interpretation of entries forming part of that chapter.

Tariff Entry 3920.31 is in Chapter 39. Chapter 39 deals with "Plastics and Articles thereof". Note 1 to Chapter 39 is as follows:-

"Note 1: Throughout this Schedule, the expression plastics means those materials of heading Nos. 39.01 to 39.14 which are or have been capable, either at the moment of polymerisation or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticiser) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

Throughout this Schedule, any reference to 'plastic' also includes vulcanised fibre. The expression, however, does not apply to materials regarded as textile materials of Sec. XI."

Note 2(n) is as follows:-

"Note 2: This chapter does not cover;

(a)...

(n) Articles of Sec.XVI (Machines and mechanical or electrical appliances)

Therefore, articles falling under Section XVI (chapters 84 and 85) will not fall under chapter 39.

Entry 39.20 is as follows;-

Heading No. Sub-heading No. Description of Rate of duty 39.20 OTHER PLATES, SHEETS, FILM, FOIL AND STRIP OF PLASTICS, NON-CELLULAR, WHETHER LACQUERED OR METALLISED OR LAMINATED, SUPPORTED OR SIMILARLY COMBINED WITH OTHER MATERIALS OR NOT

- of polymers of vinyl chloride:

3920.11 Rigid plates, sheets, (60%) film, foil and strip 3920.12 Flexible plates, (60%) sheets, film, foil and strip -

..... -

Of regenerated Cellulose 3920.21 Film, if thickness (60%) not exceeding 0.25 millimetre 3920.22 Sheet (60%) -

..... -

..... -

Of other plastics:

3920.31 Rigid plates, sheets, (60%) film, foil and strip 3920.32 Flexible plates, sheets (60%) film, foil and strip -

The heading of entry 39.20 which govern all entries forming part of 39.20 covers, inter alia, sheets of plastics, whether laminated and whether supported or similarly combined with other materials or not. Therefore, unlike Old Tariff Entry 15A(2) even sheets of plastics combined with other material can be classified under entry 39.20. Polymers of vinyl chloride are classified under entry 3920.11 to 3920.19. Regenerated Cellulose falls under entry 3920.31 to 3920.39. Sheets of other Central Excise Authorities, decorative laminated sheets which consist of a combination of paper and synthetic resins should be classified under entry 3920.31 since the final product which is in the form of laminated sheets, has all the essential characteristics of a plastic rather than of paper.

The manufacturers, however, contend that paper which is a component of a decorative laminated sheet constitutes 60% to 70% of the product while resins constitute only 30% to 40% of the product. Hence looking to the predominance of paper as also the decorative quantity given by it to the sheets, decorative laminated sheets should be classified under Chapter 48 of the New Tariff which deal with "Paper and Paperboard, Articles of Paper Pulp, of Paper or of Paperboard". The relevant entries, according to the manufacturers, are 4818.90/4823.90. Note 1(f) to Chapter 48 is as follows:

"Note (1): This chapter does not cover:

(a).....

.....

(f); Paper reinforced stratified plastic sheeting, or one layer of paper or paperboard coated or covered with a layer of plastics, the latter constituting more than held the total thickness, or articles of such materials, other than wall coverings of heading No. 48 14(Chapter 39)."

The manufacturers have placed emphasis on this note. This note, however, will not have any application in the present case. In the first place the note refers to paper- reinforced stratified plastic sheeting or one layer of paper coated or covered with a layer of plastics. the process of manufacture of laminated sheets which is described earlier is totally different. It requires impregnation of paper with resins, drying it to produce prepeg and then pressing layers of prepeg under a hydraulic press, Therefore, simply because paper content is higher than resin content, note 1(f) does not become applicable.

Entry 4818 is as follows;

Heading No. Sub-heading No Description of goods Rate of duty 4818 OTHER ARTICLES OF PAPER PULP, PAPER, PAPER-

BOARD, CELLULOSE WADDING OR WEBS OF CELLULOSE FIBRES.

Cartons, boxes containers and cases --

- (including flattened or folded boxes) and flattened or folded cartons), whether in assembled or unassembled condition:

4813.11 Intended for packing of match sticks Nil 4818.12 Printed cartons, boxes, containers and cases, made wholly out of paper or paper-board of heading No. or sub-heading No. 48.04, 4805.11, 4805.19, 4807.91, 4807.19 or 4818.13 Other printed cartons, boxes and cases 35% 4818.19 Other Nil 4818.20 Toilet tissues, handkerchiefs and 12% cleansing tissues of paper 4818.90 Other 12% [Underlining ours] The manufacturers contend that decorative laminates should be classified as other articles of paper under entry 4818.90 looking to the predominance of paper in the contents of decorative laminated sheets.

Now, since decorative laminates are composed of paper as well as resins, it is possible that they can be classified either under Chapter 39 which deals with plastics or under Chapter 48 which deals with paper. In order to decide which is the more appropriate classification it is also necessary to refer to the Rules of Interpretation prescribed under the New Tariff Act. Rules 1, 2(b) and 3 as follows:

"1. The titles of Section and Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the term so 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. 2(a)

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material

or substance. The classification of goods consisting of more than one material or substance shall be according to the principles contained in rule 3.

3. When by application of sub-

rule(b) of rule 2 or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows;

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description...

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration."

[underlining ours] Rule 1 does not help to classify the goods in the present case because Note 1(f) in Chapter 48 is not applicable to these goods. The other relevant rule of interpretation is Rule 3(b) which provides that mixtures or composite goods consisting of different materials which cannot be classified with reference to Rule 3(a) as in the present case, are to be classified as if they consisted of the material or component which gives them their essential character. in the present case, the essential character of a decorative laminated sheet is its rigidity or strength and its resistance to heat and moisture. These are essentially characteristics which are imparted by resins. Paper does not possess any of these characteristics. Therefore, applying Rule 3(b) and going by the essential characteristic of such laminated sheets, these goods are more appropriately classifiable under Chapter 39.

In the Explanatory Note to Chapter 39 in the harmonised System of Nomenclature also, it is provided as follows:

"Combinations of plastics and materials other than textiles:

This Chapter also covers the following products, whether they have been obtained by a single operation or by a number of successive operations provided that they retain the essential character of articles of plastics:

(c) Paper-reinforced stratified plastic sheeting, and products consisting of one layer of paper or paperboard coated or covered with a layer of plastics, the latter constituting more than half the total thickness, other than wall coverings of heading 48.14.

(d) Products consisting of glass fibres or sheets of paper, impregnated with plastics and compressed together, provided they have a hard, rigid character. (If having more the character of paper or of articles of glass fibres they are classified in Chapter 48 or 70, as the case may be)."

Note (d) clearly provides that products consisting of glass fibres or sheets of paper impregnated with plastics and compressed together as in the present case, if they have a hard and rigid character, would fall under Chapter 39. If they have more the character of paper or of articles of glass fibres, they would be classified under Chapter 48 or Chapter 70, as the case may be. The decorative laminated sheets which have a hard and rigid character are, therefore, classifiable under Chapter 39 and not under Chapter 48. The appropriate entry is 3920.31/3920.37 which deals, inter alia, with sheets of other plastics, rigid, laminated. Decorative laminated sheets, therefore, cannot be classified under Tariff Entry 4818.90/4823.90. CEGAT is not right in classifying these under Entry 4818.90/4823.90 Industrial laminated sheets which are paper-based are used for electrical insulation. Glass epoxy laminates are also used as electrical insulators. The New Tariff Act contains a separate Section XVI which deals, inter alia, with electrical equipment and parts thereof. Chapter 85 which forms part of Section XVI deals with electrical machinery and equipment and parts thereof. Entry 8546 deals with "electrical insulators of any material". There is, therefore, a specific entry in the New Tariff Act dealing with electrical insulator of any material. Under chapter 39 which deals with plastics and articles thereof, chapter Note 2 (n) which is set out earlier, provides that this chapter does not cover articles of Section XVI. Therefore, industrial laminates and glass epoxy laminates which are used for electrical insulation will not fall under Chapter 39 but will fall under Chapter 85 under Entry 8546.00 (Entry 7014 under the New Tariff Act prior to 1.3.1988).

It is the contention of the Central Excise Department that industrial laminates and glass epoxy laminates cannot be considered as electrical insulators because these sheets are required to be cut in the requisite shape and holes may have to be punched in them before they could be fitted as insulators. However, mere cutting or punching holes does not amount to manufacture. These sheets have insulating properties and are used as electrical insulators. They cannot be taken out of the category of electrical insulators only because they have to be cut to the requisite shape or a few holes may be required to be required to be punched in them in order that they may fit into the electrical instrument/appliance in question. The Tribunal, therefore, has correctly classified there industrial laminates and glass epoxy laminates under Tariff Item 8546 of the New Customs Tariff (after 1.3.88) and under Tariff Entry 7014 under the New Customs Tariff upto 28-2-1988. Under the Old Customs Tariff, however, there is no express entry dealing with electrical insulators equivalent to Entry 8546.00 of the New Customs Tariff. Entry 15A(2) of the Old Tariff will not cover these laminated sheets also for the same reason as in the case of decorative laminated sheets. These sheets, therefore, have been rightly classified under the residuary Tariff Entry 68 of the Old Customs Tariff.

To sum up, the Tribunal has rightly classified decorative laminates under the Old Tariff Entry 68. The decision of the Tribunal, however, in so far as it classifies decorative laminated sheets are classified under Tariff Entry 3920.31/3920.37 of the New Tariff. In respect of Industrial laminates (paper-based) and glass epoxy laminates, the Tribunal has correctly classified these laminates under Tariff Item 68 of the Old Tariff and under Tariff Entry 7014/8546 of the New Tariff.

Accordingly these appeals are partly allowed. Any entitlement to refund will be processed in accordance with the decision of this Court in Mafatlal Industries Ltd. etc. etc. v. Union of India etc. etc. (1996 [9] SCALE 457). There will be no order as to costs in the circumstances of the case.