

Supreme Court of India

Bakelite Hylam Limited vs Collector Of Central Excise, ... on 14 July, 1998

Author: S Agrawal

Bench: S.C. Agrawal, S. Saghir Ahmad

PETITIONER:

BAKELITE HYLAM LIMITED

Vs.

RESPONDENT:

COLLECTOR OF CENTRAL EXCISE, HYDERABAD

DATE OF JUDGMENT: 14/07/1998

BENCH:

S.C. AGRAWAL, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

[WITH CIVIL APPEAL NOS. 2448-51 of 1986] J U D G M E N T S.C. AGRAWAL, J.:

M/s Bakelite Hylam Limited, the appellant in these appeals, [hereinafter referred to as 'the appellant'], manufactures laminated boards and sheets. The laminated sheets are paper based and glass fabric based. For manufacturing paper based laminated sheet paper is passed through or immersed in a resin bath (phenol formaldehyde resin) and as a result the paper is impregnated with resin. This paper is then dried. The paper which is impregnated with resin is known as 'Prepeg-P'. Layers of 'Prepeg-P' are then stacked and the sheets so stacked are then pressed together in a hydraulic press applying pressure and heat to make a laminated sheet. The process of manufacturing cotton fabric and glass fabric based laminated sheets is similar. In case of cotton fabric based laminated sheets cotton fabric is impregnated with resin and dried. Such fabric which is so impregnated is known as 'Prepeg-F'. It is also described as 'Prepeg-C'. In glass fabric based laminated sheets glass fabric is impregnated with resin and the impregnated sheet is known as 'Prepeg-G'. The question which falls for consideration in these appeals is with regard to the classification of these products, namely, 'Prepeg-P', 'Prepeg-F' and 'Prepeg-G', for the purpose of levy of excise duty under the erstwhile Central Excise Tariff [hereinafter referred to as 'the Tariff'] contained in the First Schedule to the Central excises & Slat Act, 1944.

The Central Excise and Gold (Control) Appellate Tribunal [hereinafter referred to as 'the Tribunal'] in its judgment dated march 25, 1986 has held that 'Prepeg-F' (described as 'Prepeg-C') is assessable under Tariff Item 19 (III), 'Prepeg-P' is assessable under Tariff Item 17(2) and 'Prepeg-G' is assessable under Tariff Item 22-F of the Tariff. Civil Appeals Nos. 2448-51 of 1986 have been filed by the appellant against the said judgment of the Tribunal.

The matter came up for consideration again before a Bench of three Members of the Tribunal and by judgment dated June 3, 1991 the Tribunal by majority [Shri G. Sankaran, President and Shri N.K. Bajpai, Member (Technical)] took the same view as that taken by the Tribunal in the earlier judgment dated March 25, 1986 and held that 'Prepeg-P', 'Prepeg-F' fell under Items 17(1), 19(III) and 22-F(4) of the Tariff respectively. Shri S.L. Peeran, Member (Judicial), however, took a different view and held that the said products could not be classified under the aforementioned Items of the Tariff and were assessable under the residual entry in Item 68 of the Tariff. Civil Appeal Nos. 2676-2678 of 1992 have been filed by the appellant against the said judgment of the Tribunal.

We will first take up 'Prepeg-F' which has been held to fall under Item 19(III) of the Tariff. In the Tariff, as applicable in the year 1977-78 (period relevant for Civil Appeals Nos. 2448-51 of 1985), Item 19(III) read as under :-

"COTTON FABRICS "Cotton fabrics" means all varieties of manufactured either wholly or partly from cotton and includes dhoties sarees, chadders, bed-sheets, bed-spreads, counter- panes, table-cloths, embroidery in the piece, in strips or in motifs and fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials but does not include any such fabric if it contains-

- (i) 40 per cent or more by weight of wool;
- (ii) 40 per cent or more by weight of silk;
- (iii) 60 per cent or more by weight of rayon or artificial silk; or
- (iv) 50 per cent or more weight of jute (including Bilipatam jute or mesta fibre):

Provided that in the case of embroidery in the piece, in strips or in motifs and fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials, the percentages referred to in (i) and (iv) above shall be in relation to the base fabrics which are embroidered or impregnated or coated, as the case may be.

III. Cotton fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials."

In the year 1984-85 (period relevant for Civil Appeals Nos. 2676-2678 of 1992) there was some change in the main part but the same has no bearing because there was no change in clause III of Item 19. Item 19(III), as amended, was in these terms:

"COTTON FABRICS 'Cotton fabrics' means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chadders, bed-sheets, bed-spreads, counter-panes, table-cloths, embroidery in the piece, in strips or in motifs, fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials and fabrics covered partially or fully with textile flocks or with preparations containing textile flocks, if (i) in such fabrics cotton predominates in weight, or (ii) such fabrics contain more than 40 per cent by weight of cotton and 50 per cent or more by weight of non-cellulosic fibres or yarn or both:

Provided that in the case of embroidery in the piece, in strips or in motifs, fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials, and fabrics covered partially or fully with textile flocks or with preparations containing textile flocks or with preparations containing textile or percentages, as the case may be, shall be in relations to the base fabrics which are embroidered or impregnated, coated or laminated or covered, as the case may be- (III) Cotton fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials."

Before the Tribunal it was urged on behalf of the appellant that 'Prepeg-F, which is impregnated cotton fabric, cannot be regarded as cotton fabric falling under Item 19(III) of the Tariff. It was also urged that Item 19(III) refers to cotton fabrics impregnated, coated or laminated with preparations of cellulose derivations or of other plastic materials and that the materials with which 'Prepeg-F is impregnated are not plastic materials. The Tribunal has rejected the said contention and has held that it could not be proved that the proportion of the impregnated materials had reached such a level in the impregnated fabrics that the final product had ceased to contain the characteristics of a fabric so as to take it out of the purview of the cotton fabric as set out in Item 19(III) of the Tariff. The Tribunal was of the view that the term "cotton fabric" covers a wide range. As regards the submission that phenol formaldehyde resin with which the fabric is impregnated is not a plastic material, the Tribunal held that the expression "artificial plastic materials" in Item 19(III) embraces within itself resin also since plastic is a generic term and as understood in popular sense it covers resin.

The said finding recorded by the Tribunal has been assailed by Shri J. Vellapally, the learned senior counsel appearing for the appellant. Shri Vellapally has invoked the 'common parlance test' and has submitted that in common parlance 'Prepeg-F cannot be regarded as cotton fabric. The learned counsel has placed reliance on the decision of this court in Purewal Associates Ltd. V. Collector of Central Excise, 1996 (10) SCC 752. We do not find any substance in the said contention of Shri Vellapally. In Purewal Associated Ltd. [supra] this court has taken note of the earlier decision in Plasmac machine Mfg. Co. (P) Ltd. v. Collector of Central Excise, 1991 supp. (1) SCC 57, wherein it

was held that 'where definition of a word has not been given, it must be construed in its popular sense'. So also in *M/s Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh*, 1981 (2) SCC 528, it has been held that "if any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted". [p.530] In term 19 the expression "cotton fabrics" has been defined to include "fabrics impregnated coated or laminated with preparations of cellulose derivatives or of other artificial plastic material". In view of the inclusive clause in the definition of "cotton fabrics" contained in Item 19 it cannot be said that 'Prepeg-G' which is impregnated cotton fabric cannot be regarded as cotton fabric for the purpose of Item 19(III) of the Tariff.

Item 19(III) came up for consideration before a Bench of three Judges of this Court in *Collector of Central Excise, Hyderabad v. Fenoplast (P) Ltd.*, 1994 supp. (2) SCC

678. In that case, the question was whether rexine cloth which was manufactured by coating of cotton fabric with PVC resin, plasticizers and other materials could be held to fall under Item 19(III) of the Tariff. One of the contentions urged on behalf of the manufacturer was that in interpreting the meaning of the words in a taxing statute like the Excise Act, the meaning assigned to the words by the trade and its popular meaning should be accepted and the test to be applied is to see how the product is identified by the class or section of people who deal in the product or who use the product. The said contention was rejected by the Court on the view that the said proposition is applied only when the words in question are not defined in the Act and reliance was placed on the observations aforementioned in the case of *M/s Indo International Industries* [supra]. The contention that after coating the cotton fabric no longer retains its identity as cotton fabric and that a new distinct commodity emerges as a result of coating and the resulting product cannot be regarded as cotton fabric was rejected and it was observed:-

"This argument does not take into account the fact that Parliament has chosen to include the coated/laminated fabrics within the ambit and purview of 'cotton fabrics' and parliament's power to do so is not questioned and probably cannot be questioned. The fact remains that to start with it is a cotton cloth upon which certain coating material is applied." [p.687] In *Fenoplast (P) Ltd.* [supra] this Court also considered the question whether PVC resin that was used for coating the cotton fabric could be regarded as plastic material for the purpose of Item 19(III) and it was held that PVC resin is also a plastic since synthetic resin is a polymer itself while plastic is polymer plus such additives as fillers, coloured plasticizers, etc. Insofar as 'Prepeg-F' is assessable under Item 19(III) of the Tariff.

We may now come to 'Prepeg-P' which has been held to fall under Item 17 of the Tariff. In 1977-78 [period relevant for Civil Appeal Nos. 2448-2451 of 1986] Item 17(2) of the Tariff was in these terms:-

"Paper and Paper Board, All Sorts (including pasteboard, millboard, straw-board, cardboard and corrugated board,) in or in relation to the manufacture of which any

process is ordinarily carried on with the aid of power-

x x x x (2) Paper board and all other kinds of paper (including paper or paper boards which have been subjected to various treatments such as coating, impregnating, corrugation, creping and design printing), not elsewhere specified." In 1984-85 [period relevant for Civil Appeal Nos. 2676-

2678/92] Item 17 of the Tariff read as under:-

"Paper and Paper Board, all Sorts (including paste-board, mill-board, straw-board, cardboard and corrugated board) and articles thereof specified below, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power-

(1) Paper and paper board, (including paper or paper boards which have been subjected to various treatments such as coating, impregnating, corrugation, creping and design printing), not elsewhere specified. x x x x"

Before the Tribunal it was urged that 'Prepeg-P' is not known as paper in the industry and as such it is not assessable under Item 17 of the Tariff. Rejecting the said contention the Tribunal held that Item 17(2)/17(1) covers all categories of impregnated paper and that 'impregnated paper' has been expressly included in Item 17(2)/(1) by the word "including".

Shri vellapally has assailed the said view of the Tribunal and has placed reliance on the minority judgment of the Judicial Member of the Tribunal wherein reference has been made to the Trade Advice No. 51/75 dated October 31, 1975 issued by the Central Board of Excise and Customs, to the effect that "treated paper which is claimed to be an intermediary product in the manufacture of decorative and laminates sheets falling under Tariff item 15A of Central Excise Tariff is not classifiable under Tariff Item 17 of Central Tariff". We are unable to accept the said contention of Shri Vellapally passed on the said Trade Advice because shortly thereafter the Central Board of Excise and Customs, in its letter No. 61/13/76-cx 2, dated October 13, 1976, has expressed the view that resin impregnated paper which is marketable would merit classification under Tariff Item 17(2). The same view was repeated by the Central Board of Excise and Customs, Tariff Advice No. 2/84 dated January 12, 1984 wherein it was stated that craft paper subjected to the process of impregnation with synthetic resins for the manufacture of plastic laminated sheets is classifiable under Tariff Item 17(2) as converted paper and eligible for exemption under Notification 63/82-C.E. dated 28.2.82 subject to the condition stated therein.

Shri Vellapally has also submitted that impregnated paper is different from 'Prepeg-P' because impregnate paper does not cease to remain paper, while 'Prepeg-P' cannot be regarded as paper and has invited our attention to the Explanatory Notes (Vol.2) to the Harmonised Commodity Description and coding system published by Customs Co- operation Council, Brussels wherein it is stated:-

"Impregnated Paper and Paperboard Most of these papers and paperboards are obtained by treatment with oils, waxes, plastics, etc., in such a manner as to permeate them and give them special qualities (e.g. to render them waterproof, greaseproof, and sometimes translucent or transparent). They are used largely for protective wrapping or as insulating materials.

Impregnated papers and paperboards include, oiled wrapping paper, oiled or waxed manifold paper, stencil paper, indicator papers such as litmus or pole- finding papers, insulating paper and paperboard impregnated, e.g., with plastics, rubberised paper, paper and paperboard merely impregnated with tar or bitumen.

Certain papers such as wallpaper base may be impregnated with insecticides or chemicals."

9pp. 667-668, First Edition (1986)] It is no doubt true that impregnated paper referred to in the said notes is one which is used largely for protective wrapping or as insulating materials. But it does not mean that paper which is impregnated with resin for the purpose of manufacturing laminated sheets cannot be regarded as impregnated paper under item 17(2)/17(1) of the Tariff.

'Prepeg-G' has been held to fall under Item 22F/22-F(4) of the Tariff. In 1977-78 [period relevant for Civil Appeal Nos. 2448-2451/86] Item 22 of the Tariff read as under:-

"Mineral Fibres Mineral fibres and yarns, and manufactures therefrom, in or in relation to the manufacture of which any process is ordinarily carries on with the aid of power. Explanation I.- "Mineral fibres and yarns, and manufactures therefrom" shall be deemed to include-

- (i) glass fibre and yarn including glass tissues and glasswool;
- (ii) asbestos fibre and yarn;
- (iii) any other mineral fibre of yarn, whether continuous or otherwise such as slag-wool and rock-wool; and
- (iv) manufactures in which mineral fibres or yarn or both predominate or predominates in weight.

Explanation II.- this item does not include asbestos cement products." In 1984-85 [period relevant for Civil Appeal Nos. 2676-

2678/92] Item 22F(4) was in these terms:-

"Mineral Fibres Mineral fibres and yarn and other manufactures therefrom, in or in relation to the manufacture of which any process is ordinarily carried on with the aid

of power, the following, namely:-

x x x (4) Other manufactures in which mineral fibres or yarn or both predominate or predominates in weight."

Shri Vellapally has submitted that Item 22-F/22F(4) refers to mineral fibres and yarn and other manufactures therefrom in or in relation to the manufacture of which any process is ordinarily carried on with the aid or power and that glass fabric, which is made out of mineral fibre and yarn would fall under item 22-F of the Tariff, but 'Prepeg-G' which is obtained by impregnation of glass fabrics would not fall within the ambit of Item 22-F because it is neither mineral fibres or yarn nor is it a product manufactured from mineral fibres or yarn. In support of this submission Shri Vellapally has placed reliance on the decision of this Court in Mahindra Engineering and Chemical Products Ltd.v. Union of India & Ors. 1992 (1) SCC 727. In that case the question was whether tubular shaped are chamber housings which were manufactured from glass fabrics purchased from manufacturers were assessable to duty under Item 22-F(4) or under residuary Item 68 of the First Schedule to the Central Excises and Salt Act, 1944. This Court held that the said product did not fall under Item 22-F(4) and that it would be assessable under residuary Item 68. It was observed:-

The entry is in two parts, one, descriptive and the other explanatory. Both are to be read together to bring out the scope and extent of its applicability fully. The first declares the items which are assessable to duty. But restricts it to only those in relation to the manufacture of which any process is ordinarily carried on with the aid of power. Having thus specified the items and the condition on which it would be covered in the entry it proceeds to amplify it in the second part by using the words 'following namely' thus explaining the items that were intended to be covered in this entry. Use of expressions 'namely', or 'that is to say' followed by description of goods is usually exhaustive unless there are strong indications to the contrary. Language of serial No. 4 is plain and simple. It intends to clarify the expression 'manufacture therefrom' by expanding it to include in its ambit even those manufactures in which fibre or yarn predominated in weight. But it did not go beyond it and purported to include manufactures out of manufacture of a commodity in which mineral fibre or yarn predominated.

"[pp. 729, 730.] "Thus glass fabric manufactured out of mineral fibre is assessable to duty under Item 4 but are chamber housing manufactured from glass fabric cannot be placed at par with glass fabric and cannot be considered as 'other manufacture' of glass fibre or yarn." [p.730] In view the decision of this Court in Mahindra Engineering and Chemical Products Ltd. [supra] it must be held that 'Prepeg-G' manufactured from glass fabrics would not fall in Item 22-F/22-F(4) as found by the Tribunal and that 'Prepeg-G' was assessable to excise duty during the relevant period under residuary Item 68 of the Tariff. The impugned judgment of the Tribunal in so far as it held that Prepeg-G under Item 22-F/22-F(4) of the Tariff cannot be upheld and has to be set aside.

In the result, the appeals are partly allowed and the impugned judgment of the Tribunal to the extent they hold that 'Prepeg-G' manufactured by the appellant was assessable to excise duty at the

relevant time under Item 22-/F22-F(4) of the Tariff are set aside and it is held that 'Prepeg-G' was assessable to duty under residuary Item 68 of the Tariff. No order as to costs.