Supreme Court of India
Reliance Cellulose Products Ltd vs Collector Of Central Excise, ... on 8 July, 1997
Bench: Suhas C. Sen, K.T. Thomas

CASE NO.:
Appeal (civil) 2886 of 1991

PETITIONER:
RELIANCE CELLULOSE PRODUCTS LTD.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, HYDERABAD

DATE OF JUDGMENT: 08/07/1997

BENCH:
SUHAS C. SEN & K.T. THOMAS

JUDGMENT:

JUDGMENT 1997 Supp(1) SCR 485 The Judgment of the Court was delivered by SEN, J.

M/s Reliance Cellulose Products Limited, the appellant-company manufactures Sodium Carboxymethyl Cellulose (hereinafter referred to as SCMC). The contention of the appellant-company is that the product manufactured by them is classifiable under Item 68 of the Central Excise Tariff Act. The contention of the Department is that the product comes squarely within the tariff item 15A (1) and, therefore, there is no reason to fall back upon the residuary head of tariff item No. 68.

Tariff item 15A at the material time stood as under:

ARTIFICIAL OR SYNTHETIC RESINS AND PLASTIC MATERIALS; AND OTHER MATERIALS AND ARTICLES SPECIFIED BELOW-

(1) Condensation, polycondensation and fifty percent polyaddition products, whether or not modified or ad valorem polymerised, and whether or not linear (for example, pheno-plasts, amino-plasts, alkyds, polyallyl esters and other unsaturated polyesters, silicones); polymerisation and co- polymerisation products (for example, polyethylene, polytetrahaloethylenes, polyisobutylene, polystyrene, polyvinyl chloride, polyvinyl acetate, polyvinyl chloro-acetate and other polyvinyl derivatives, polyacrylic and polymethacrylic derivatives, coumaroneindene resins); regenerated cellulose; cellulose nitrate, cellulose acetate and other cellulose esters, cellulose ethers and other chemical derivatives of cellulose, plasticised or not (for example, collodions, celluloid); vulcanised fibre hardened gelatin natural resins modified by fusion (run gums); artificial resins obtained by esterification of natural resins or of resinic acids (ester gums); chemical derivatives of natural rubber (for example, chlorinated rubber, rubber hydrochloride, oxidised rubber, cyclised rubber); other high polymers, artificial resins and artificial plastic materials, including alginic acid, its salts and esters; linoxyn.

(2) Articles of materials described in sub-Item (1), Fifty percent the following, namely :- ad valorem Boards, sheeting, sheets and films, whether lacquered metalised or laminated or not; flat tubings not containing any textile material.

(3) Polyurethane foam.

Seventy five percent ad valorem (4) Articles made of polyurethane Seventy five percent ad valorem.

Prior to 1.3.82 tariff item 15A stood as under:

"15A. ARTIFICIAL OR SYNTHETIC RESINS AND PLASTIC MATERIALS AND CELLULOSE ESTERS AND ETHERS, AND ARTICLES THEREOF-

(1) The following artificial or synthetic resins and plastic materials, and cellulose esters and ethers in any form, whether solid, liquid or pasty, or as powder, granules or flakes, or in the form of moulding powders, namely :-

XXXXXXXX X

(2) x x x x x x x

(3) Polyurethane foam.

(4) Articles made of polyurethane foam."

The argument of the appellant is that prior to 1.3.82, the main heading of the Tariff Item 15A included "cellulose esters and ethers" alongwith "artificial or synthetic resins and plastic materials." Sub-Item (1) of Tariff Item 15A listed the various materials under three clauses (i), (ii) and (iii) which were to be subjected to central excise duty. After the amendment made by the Finance Act, 1982, the opening sentence of sub-item (1) of Tariff Item 15A, viz. "The following artificial or synthetic resins and plastic materials.....namely", clearly indicates that only those materials which were mentioned in clauses (i), (ii) and (iii) were to be taxed under Tariff Item 15A (1). Cellulose ether and esters do not figure in any of these three clauses. It means that the clear intention of the legislature was to exclude cellulose esters and ethers from Tariff Item 15A (1).

This argument is without any substance because under the amended tariff item 15A under clause (i), various items which have to be taxed under item 15A have been enumerated and "other cellulose esters, cellulose ethers and other chemical derivatives of cellulose plasticised or not (for example, collodions, celluloid)" have been specifically included.

The appellant-Company filed a classification list on 18.6.82. Their product Sodium Carboxymethyl Cellulose was described as Car-boxymethyl Cellulose and classified under Tariff Item 68. The Classifica-tion list was approved provisionally and the assessments were made provisionally under Rule 9-B of the Central Excise Rules from 1.3.82. A sample of the product was tested by the Departmental Chemical Examiner, who reported the test result as follows:

"The sample is in the form of a pale brown powder. It is a sodium salt of carboxymethyl cellulose.....a cellulose ether."

RCPL were not satisfied with the test report. They requested for re-test of the sample by the Chief Chemist, CRCL, New Delhi. The duplicate sample lying with RCPL was sent for re-test by the Chief Chemist with their concurrence. The Chief Chemist reported the test result as follows:

"Sample is in the form of a pale brown powder. It is composed of sodium salt of carboxymethyl cellulose. Percentage of Active mat-ter being 46.7 (forty six decimal seven). It is a cellulose ether which is one variety of cellulose derivatives. The presence of sodium in the product does not affect its classification as cellulose ether."

When this result of the re-test was communicated to RCPL, they requested for drawal of a fresh sample and sending it for a fresh test, on two grounds:

(i) re-test was done after more than a year from the date of drawal of sample;

(ii) because the Chief Chemist's report did not mention anything about the issue raised by the Superintendent of Central Excise in his Test Memo dated 8.4.83, viz.. the sample has to be tested for:

(a) Regenerated Cellulose;

(b) Cellulose Nitrate, Cellulose acetate and other Cellulose Ethers,

Cellulose Ethers and other chemical derivatives of cellulose, plasticised or not.

The Assistant Collector of Central Excise, vide his letter No. V/68/17/49/84 dated 22.2.85 refused to draw a fresh sample for retesl. Against the said order, RCPL filed an appeal before Collector (Appeals), Madras, who by his order-in-appcal No. 191/85 (H) dated 2.5.86, allowed the appeal and directed the Assistant Collector to hear the case de novo.

Thereafter, the Assistant Collector of Central Excise, Hyderabad I Division issued a show cause notice No. V/68/17/154/82 Vol. I dated 11.8.86 calling upon RCPL to show cause as to why Sodium Carboxy Cellulose manufactured by them should not be classified under the erstwhile Tariff Item 15A(1) read with Chapter 39 of the Central Excise Tariff Act, 1985 and why the difference of duty payable under Tariff Item 15A(1) and that paid under Item 68 should not be paid under Section 11A of the Central Excise and Salt Act from 28.2.82 till the date of show cause notice. In this show cause notice the Assistant Collector, ir.icr alia stated that:-

"It is no longer necessary to further analyse and ascertain whether the material is plasticisable and whether the product is affected by acids in cold and above all whether the product is sodium car-boxymethyi cellulose at all as claimed by them when the test reports dearly and in unequivocal terms indicated that product is composed of sodium salt of sodium carboxymethyl cellulose and the presence of sodium docs not in any way affect the classification of the product as cellulose ether. It

also appears that the age of sample is no criterion, which affects the composition of the product and is not relevant."

In their reply dated 9.9.86 to the show cause notice, RCPL chal-lenged the show cause notice stating that it could not be issued without first deciding the issue regarding drawal of fresh sample and sending it to Chief Chemist. They also contended that the earlier test reports of Chemi-cal Examiner and Chief Chemist were not correct, and that CMC was not ether and not classifiable under Tariff Item 15A (1). During the personal hearing before the Assistant Collector on 11.9.86, their counsel renewed the request for test of a fresh sample by Chief Chemist and requested for facility of cross-examination of Chemical Examiner and Chief Chemist on the next date of hearing. Assistant Collector passed his order-in-original dated 14.10.86 classifying CMC under Tariff Item 15A (1) and directing RCPL to pay differential duty from 28.2.82 to 27.2.86 without giving further hearing. In the said order-in-original the Assistant Collector recorded the following reasons for not drawing a fresh sample for re-test by the Chief Chemist:

"The sample of their product was initially drawn on 8.4.83 and was sent to the Chemical Examiner, Madras in the Prescribed test memo. The test results were received in Chemical Examiner's report dated 31.5.83 which revealed that the sample is a sodium salt of carboxymethyl cellulose and was a cellulose ether. On receipt of this unfavourable test results from the chemical examiner the company stated that they are not agreeable to this test report and wanted that more elaborate tests as suggested by them should be carried out to ascertain more detailed composition of the sample as the test report of the Chemical Examiner, Madras was incomplete. The sample lying with the company only was sent for the purpose of retcst to the Chief Chemist, CRCL, New Delhi. The company also gave a declaration that the sample which they requested for retest is sodium carboxymethyl cellulose manufactured in their factory which was furnished as an enclosure to their letter No. RCP/CE/6642/82-83 dated 13.9.83. In this respect, the company was specifically asked whether they would like to send the duplicate sample for retest and accordingly the sample was sent for re-test with the concur-rence of the company. The report of analysis clearly confirmed the original test report asserting in unequivocal terms that the sample is a cellulose derivative and that the presence of sodium docs not in any way affect the classification of the product as cellulose ether. The company incidentally sought permission to send samples of their product to National Test House, Alipore. Permission was also accorded for sending the samples. The company in their letter RCP/CE/15A/6901 dated 22.9.83 also confirmed having sent samples to National Test House, Alipore but never mentioned about the test results to the department. Presumably the test results were not in their favour. Thus it may be seen that enough oppor- tunities were given to the company for vindicating their stand in the matter. Samples cannot be sent time and again at the will and pleasure of the company. Acceptance of such a request of the company would defeat the purpose inasmuch as the samples intended to be sent for test may be so arranged to get favourable results also. Moreover, there is a procedure set out under the rules for drawal of samples for test and re-test. Accordingly their contention that the issue cannot be decided without a further test is not correct.

The company also raised the issue that the test results given by the Chief Chemist, CRCL, Delhi is not acceptable to them on the ground that the sample is old The company did not show any evidence

on record or otherwise that the composition of sample gets affected due to age. Hence this plea of the company cannot be accepted.

The appellant-company preferred an appeal against the order of the Assistant Collector. The Collector of Central Excise (Appeals), Madras upheld the order of the Assistant Collector and held that the tests have been made repeatedly by proper authority under Rule 56 of Central Excise Rules. The Assistant Collector was right in not relying upon the other test results produced by the appellant-company.

On further appeal Tribunal upheld the order passed by the Assistant Collector.

These orders arc now under challenge before this Court. We were referred lo a number of test reports obtained by the appellant from various persons and on the basis of these opinions, the reports of the Departmental Chemical Examiner and also the Chief Chemist were assailed. We are of the view that the Assistant Collector cannot be said to have erred in relying upon the reports given by the Chemical Examiner and the Chief Chemist. It may be that in a given case, the report of the Chief Chemist may be demonstrated to be palpably wrong. In such a case, the Court may direct re-examination of the whole issue. But that is not the case here. It has not been shown that the Chemical Examiner or the Chief Chemist were in error in their analysis in any way. The views expressed by the Chief Examiner and Chief Chemist of the Government cannot be lightly brushed aside on the basis of opinion of some private persons obtained by the appellant.

Under Rule 56 of the Central Excise Rules, the Central Excise Officer is empowered to take samples for the purpose of testing the samples. He has to communicate the result of such tests to the manufac-turer. If the manufacturer is aggrieved by the result of the test, he can request the Assistant Collector that the samples be retested. That proce-dure has been followed. Therefore, there is no procedural infirmity in the order of the Assistant Collector nor has it been established that the Assistant Collector was wrong in relying on the report of Chemical Ex-aminer and Chief Chemist in preference to the opinion obtained by RCPL from some private individuals.

Moreover, the Tribunal has referred to several technical dictionaries and has concluded that the product Sodium Carboxymethyl Cellulose is an ether. In the background of all these facts, we are unable to uphold the contention that the Tribunal has wrongly concluded that the product manufactured by the appellant falls under Tariff Item 15A. There is ample evidence and technical literature to support the conclusion of the Tribunal and we are not inclined to interfere with the finding made by the Tribunal at this stage.

The next contention of the appellant was that the Tribunal has failed to consider the way the products of the appellants were known in the trade. It is well-settled that excisable commodities have to be understood in the sense in which the market understands them and have to be classified accordingly. This proposition may generally be held to be right but when a technical or scientific term has been used by the legislature, it must be presumed that the legislature has used the term in their technical sense.

The tariff entry 15A as it stood after its amendment made on 1.3.82 was:

"Regenerated cellulose, cellulose nitrate, cellulose accetate and ethers and other chemicals derivatives of cellulose, plasticide or not (for example Collodions, Celluloid)"

Regenerated cellulose, cellulose nitrate, cellulose accetate and ethers as well as other chemicals which were derivatives of cellulose have to be understood in the technical sense of the terms. Moreover, it has not been shown that there is a special meaning given to the product of the appellant in the market.

In the case of Dunlop India Ltd. v. Union of India and Others, [1976] 2 SCC 241, it was laid down that in interpreting words in a taxing statute, meaning must be given as people in trade and commerce, conversant with the subject, generally treat and understand them. It was further observed that technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, the Court should find no difficulty for statutory clas-sification under a particular entry. In that case, it was pointed out that scope of an entry was a matter essentially for determination by the Depart-ment. But when extraneous consideration enter the determination, inter-ference by the Court was called for. In that case, the dispute was about classification of V.P. Latex. The question was whether V.P. Latex imported by the tyre companies could be classified as rubber in raw state.

In the case of Indian Cable Company Ltd., Calcutta v. Collector of Central Excise, Calcutta and Others, [1994] 6 SCC 610, it was held that :

"In construing the relevant items or entry, in fiscal statutes, if it is one of everyday use, the authority concerned must normally, con-strue it, as to how it is understood in common parlance or in the commercial world or trade circles. It must be given its popular meaning. The meaning given in the dictionary must not prevail. Nor should the entry be understood in any technical or botanical or scientific sense."

A word of caution was added in that judgment at page 615 of the Report which is of significance. "In the case of technical words, it may call for a different approach". In other words, if the word used in a fiscal statute is understood in common parlance or in the commercial world in a particular sense, it must be taken that the Excise Act has used that word in the commonly under-stood sense. That sense cannot be taken away by attributing a technical meaning to the word. But if the legislature itself has adopted a technical term, then that technical term has to be understood in the technical sense. In other words, if in the fiscal statute, the article in question falls within the ambit of a technical term used under a particular entry, then that article cannot be taken away from that entry and placed under the residuary entry on the pretext that the article, even though it comes within the ambit of the technical term used in a particular entry, has acquired some other meaning in market parlance. For example, if a type of explosive (RDX) is known in the market as Kala Sabun by a section of the people who uses these explosives, the manufacturer or importer of these explosives cannot claim that the explosives must be classified as Soap and not as Explosive.

In the case of Chemical and Fibres of India v. Union of India & Ors., JT (1997) 1 S.C. 432, the question was whether polymer chips manufac-tured by the assessee could be classified under Entry 15A as it stood prior to 28.2.1964 under the heading "Plastics, All Sorts". The Court held that 'plastics' was a commercial term and was known in the trade and was used in the trade. The Court should not go into the technical analysis of composition and character of a product to decide the nature of the product in preference to the sense in which the market understood it. The Court should go by the trade parlance. The Court pointed out that the conclusion drawn by the Court was also supported by the technical literature and dictionaries which were cited before the Court.

The case before us, is not a case where a commonly understood commercial article like 'Plastics' is sought to be given a special meaning by reference to its chemical composition. Cellulose Ether has been made specifically taxable under Entry 15A(1). The product manufactured by the appellant is Sodium Carboxymethyl Cellulose which has been tested and found to be Cellulose Ether. The question is whether this product will come under entry 15A(1). It is not the case of the appellant that this product is known in-the market by some other name and that name is to be found in some other entry. The Tribunal was right in holding that SCMC manufactured by the appellant answered the description "Cellulose Ether" and as such was assessable under Entry 15A(1).

Under these circumstances, we are of the view that there is no reason to interfere with the decision reached by the Tribunal.

The appeal, therefore, fails and is dismissed. There would be no order as to costs.

Civil Appeal No. 784 of 1992 In view of our above decision in C.A. No. 2886 of 1991, this appeal is also dismissed with no order as to costs.