Falcon Tyres Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-24-1985

Reported in : (1985)(5)LC1798Tri(Delhi)

Appellant : Falcon Tyres Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The appellants, M/s. Falcon Tyres Ltd. are manufacturers of tyres and V-belts for motor vehicles. For the purpose of manufacture of these articles, they admittedly purchase cotton fabrics from outside and rubberise the same for further use thereafter in the manufacture of V-belts and tyres. The cotton fabrics so rubberised (and captively consumed) are called "Friction Cloth" by them. The dispute in the present case is whether this Friction Cloth would fall under Tariff Item 16A (2) relating to rubber products as claimed by the appellants or under Tariff Item 19(1)(b) relating to cotton fabrics as held by the lower authorities.

2. When the appellants received show cause notices in this regard, they had sent replies and, after adjudication, the Assistant Collector of Central Excise, Mysore, had, under his order dated 14-10-1982, classified the Friction Cloth manufactured by the appellants under Tariff Item 19 (1)(b) and called for payment of duty on that basis.

This finding had been confirmed by the Collector of Central Excise (Appeals), Madras, under his order dated 15-1-1983. It is against the said order that this

appeal has been preferred.

3. When the appeal was taken up, it was ascertained from the appellants as to whether there was any bar in our hearing the appeal in view of the fact that they had earlier moved the Mysore High Court for relief with reference to impugned order under appeal. The Consultant for the appellants clarified that the Writ Petition in the High Court was only with reference to relief against enforcement of the order and for stay thereof, pending disposal of this appeal. He confirmed that there was, therefore, no bar against our hearing the appeal on merits.

Accordingly, the hearing was held on merits.

4. We have heard Shri D.N. Kohli, Consultant, on behalf of the appellants and Shri K.D. Tayal, Senior Departmental Representative on behalf of the respondent.

5. Shri Kohli drew our attention to the report of the Chemical Examiner, in which he had observed as follows : "The sample is in the form of black strip sticky to feel. It is composed of cotton fabric impregnated with rubber compound.

Percentage of cotton fabric is 47.1% and rubber compound is 52.9%." Shri Kohli contended that as the predominant constituent was rubber compound, the subject goods could not be classified as cotton fabrics, falling under Tariff Item No. 19(l)(b). He further relied upon two decisions of the Punjab and Haryana High Court which are-Universal Conveyor Beltings v. Union of India (1984 ECR 1903) and Punjab Rubber & Allied Industries v. Union of India (1983 E.L.T. 54). But it was pointed out to him in this connection that these two decisions did not directly deal with the question of classification, but with the question of excisability of the Friction Cloth manufactured by these parties in the said cases, who had contended that the product manufactured by them would not be excisable as it was an intermediary product used captively by them. It was pointed out to Shri Kohli that no such contention had ever been put forward by the present appellants, either before the lower authorities or even in the appeal memorandum before us and, therefore, the said two decisions may not apply to the facts of the present case. He then relied on Tariff Advice No. 49/84, dated 1-10-1984 and Tariff Advice No. 38/84, dated 6-8-1984 and pointed out that Rubberised Cotton Fabrics have

been mentioned therein as classifiable under Item 19(l)(b) only if the cotton predominated in weight on the basis of the total weight and that in the absence of such predominance, they would be classifiable under Item 16A(2). He, therefore, contended that so far as subject goods are concerned, they will have to be classified under Tariff Item 16A(2) in view of the percentage of constituents as disclosed by the Chemical Examiner's report. Shri Kohli further relied upon an order passed by the Assistant Collector of Central Excise, Mysore, subsequently on 8-1-1985 with reference to Friction Cloth manufactured by the appellants themselves, classifying the same under Tariff Item 16A(2) and also to another order of the same Assistant Collector dated 21-3-1985 to the same effect. He also relied upon a decision of the Collector (Appeals), Madras, dated 18-10-1984 to the same effect in respect of another assessee.

6. On the other hand, Shri Tayal contends that so long as the cotton content is at least 40%, the subject goods would be classifiable under Tariff Item 19(l)(b) and further relied upon the definition in Section 2(f)(v) of the Central Excises and Salt Act in this connection. He drew our attention to the fact that the subject goods are called "Friction Cloth" which would show that it is dealt with by the appellants themselves as cotton fabric only. He relied upon the decisions in 1984 (18) E.L.T. 569 (Lakshmi Card Clothing Mfg. Co. Pvt. Ltd. v. Collector of Customs, Madras); and 1983 E.L.T. 1216 (International Conveyor Ltd., Aurangabad v. Collector of Central Excise, Bombay) in this connection.

So far as the order of the Assistant Collector dated 21-3-1985 is concerned, he pointed out that the order was on a price list and not on a classification list. He further relied upon the Circular Instructions No. 15/82, dated 21-7-1982 of the Bangalore Collectorate as supporting the contention of the department. He "pointed out that under the same the subject goods would be classified under Tariff Item 19(1)(b), taking into consideration the base material as also the definition in Section 2(f)(v) of the Central Excises and Salt Act.

7. We have carefully considered the submissions of both sides. The nature of the goods is not in dispute. It is admitted that the appellants purchase cotton fabrics and rubberise them on both sides for further use in the manufacture of tyres and

V-belts. The product resultant on such rubberisation of the cotton fabrics is called by them "Friction Cloth". As pointed out earlier, the composition is also not in dispute and, as disclosed by the Chemical Examiner's report, is 47.1 % cotton fabric and 52.9% rubber compound.

8. The two decisions of the Punjab and Haryana High Court referred to by Shri Kohli need not be considered in the present case since under the said decisions the goods (again called Friction Cloth by those manufacturers also) were not disputed to be classifiable under Tariff Item 19(l)(b) as such but were contended to be non-excisable. In the present instance, the appellants dispute Item 19(1)(b) and claim that proper item would be 16A(2) and further have at no stage till now raised the question of non-excisability. Therefore, the said two decisions would not apply to the present contentions.

'Cotton Fabrics' means all varieties of Fabrics manufactured either wholly or partly from cotton ...

if (i) in such fabrics cotton predominates in weight; or (ii) such fabrics contain more than 40% by weight of cotton and 50% or more by weight of non-cellulosic fibres or yarn or both." In the present instance, the base material is cotton fabric made of cotton yarn only and the further process is one of rubberisation.

Therefore, it is only the predominance of cotton in weight that would count as mentioned earlier. It had been seen that the Chemical Examiner's Report that cotton does not predominate in the subject goods as the cotton content by weight is only 47.1%. It would, therefore, appear that the subject goods would not be classifiable as Cotton Fabrics under Tariff Item 19. The 40 % test mentioned under that item would not apply to the subject goods as the same would apply only with reference to fabrics containing cotton and non-cellulosic fibres or yarn.

10. In the decision in 1984 (18) E.L.T. 569 (Lakshmi Card Clothing Mfg.

Co. v. Collector of Customs) the dispute was whether Foundation Cloth for flexible card clothing was classifiable under Item 19(1) or Item 68 of C.E.T. Though there was an element of rubber facing, it was found to be of a small proportion

compared to the cotton content. It was also noticed that it was known and traded as 'cloth' only. It was in those circumstances that the same was classified under Tariff Item 19(1).

Therefore, the facts of the said case are found to be entirely different from the facts of the present case. So far as the decision in 1983 E.C.R. 1093 is concerned, that dealt with P.V.C. Conveyor Belting in which there was no predominance of fabric. It was in those circumstances that Tariff Item 16A as well as Tariff Item 19 were ruled out and classification was done under Tariff Item 68. Therefore, the facts of that case also are different from the facts of the present case.

11. So far as the Circular Instruction No. 15/82 of the Bangalore Collectorate is concerned, the same was issued on 21-7-1982. But as Shri Kohli points out there were two later Trade Advices T.A. 49/84, dated 1-10-1984 and T.A. 38/84, dated 6-8-1984, where classification was held proper under Tariff Item 19(1)(b) only if cotton predominated in weight, classification being held to be proper under 16A(2) otherwise. Therefore, even if importance is to be attached to the departmental instructions, the classification in the present instance would have to be under Tariff Item 16A(2) in view of cotton not predominating in weight. As Shri Kohli points out, this view has been subsequently accepted by the Adjudicating Authorities also as found in the orders dated 8-1-1985 and 21-3-1985 produced by Shri Kohli. No doubt, Shri Tayal contends that the order dated 21-3 1985 was on a price list. But on a perusal of the order, it is seen that the Assistant Collector had, in the said order, held that it is very clear the goods (Friction Cloth) fall under Tariff Item 16A(2) and it was on that basis that he was approving the price list also.

12. In view of the above circumstances, we hold that the subject goods are classifiable under Tariff Item 16A(2) as claimed by the apppellants. The appeal is accordingly allowed and the orders of the lower authorities are set aside in the matter of classification.

Classification is directed to be done under T.I. 16A(2), with consequential relief.