

## General Electro Mechanical Vs. Collector of Central Excise

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Sep-25-1987

**Reported in :** (1987)(14)ECC207

**Appellant :** General Electro Mechanical

**Respondent :** Collector of Central Excise

### **Judgement :**

1. The appellants are manufacturers of Electrical Insulators made of Glass Fibre reinforced plastics. The raw materials are glass fibre in the form of yarn, rovings and glass cloth [falling under Item No. 22F of the First Schedule (hereinafter called the "GET") to the Central Excises & Salt Act, 1944], Synthetic Epoxy Resin [falling under Item 15A(1) GET], Hardeners and Accelerators [Item 68 GET]. There are variations in the relative percentages of the constituents but it is stated that the glass-fibre content always predominates by weight in the final product.

2. The dispute in these proceedings relates to the classification of the final product - electrical insulators - under the GET. It appears the goods were being classified under Item 15A(2) GET till 28-2-1979.

With the amendments to Items 15A and 22F GET by the Finance Act, 1979, the department considered that the correct item was 22F and not 68 GET, as claimed by the appellants. After hearing the appellants, the Assistant Collector passed an order on 1-6-1979, classifying the goods under Item 22F within the meaning of Clause (iv) of Explanation I thereto. The appeal filed against this order did not

meet with success and hence the present appeal before this Tribunal.

3. We have heard Shri R. Parthasarathy, Advocate, with Shri Gopal Prasad, Consultant, for the appellant and Shri K.C. Sachar, Departmental Representative, for the respondent.

4. Shri Parthasarathy's contention is that glass is a synthetic, not a natural mineral product. Hence the subject product composed predominantly of glass fibre/yarn does not fall under Item 22F GET. In this context, he drew our attention to this Tribunal's decision in the case of Bakelite Hylam Ltd., Hyderabad v. Collector of Central Excise, Hyderabad - 1985 (22) ELT 879 wherein the classification of "Hy Glass", a product similar in composition to the goods in this appeal, was held to fall under Item No. 68 GET. Reference is also invited to the Tribunal's decision in Collector of Central Excise, Madras v. I.P.G.Engineers (P) Ltd. 1986 (25) ELT 451, in support of the contention that Item 22F covered only direct manufactures from mineral fibre or yarn and not manufactures made out of such a manufactured article.

5. Shri Sachar's reply is that even under the amended entry 22F, glass fibre is shown as a mineral fibre. Hence Item 22F would cover manufactures of glass fibre and yarn. The Bakelite Hylam case (supra) dealt with laminated goods and hence is not relevant to the present dispute. There is a decision of the Tribunal in the case of Mahindra Engineering & Chemical Products v. Collector of Central Excise, Pune 198f ..(IS) ELT 680, contrary to the view taken in the I.P.G. Engineers case (supra). He also draws our attention to the decision in Talbros Automotive Components Ltd. v. Collector of Customs, Bombay 1984 (15) ELT 193 on fibre glass reinforced goods holding that even 1% glass fibre would make the product fall under Item No. 22F GET. With effect from 1-3-1979, the criterion is predominance. The subject goods consist predominantly of glass fibre and yarn. Hence, the correct item for this is 22F and not 68.

6. At the commencement of his reply, Shri Sachar had submitted that the impugned order did not deal with the issue decided in the order-in-original, viz. the classification of the goods with effect from 1-3-1979 since it dealt with the pre 1-3-1979 period. Therefore, contended Shri Sachar, there was no appeal before the

Tribunal in which the post 1-3-1979 classification could be gone into. The Bench over-ruled this objection holding that it was the duty of the Collector (Appeals) to decide on the issue and if he did not, that would not mean that the Tribunal, in the present appeal against the Collector's order, could not go into the issue.

7. We have carefully considered the submissions of both sides. Item No.22F GET, as it stood after the amendments made by the Finance Act of 1979 but before its further amendment of 1980, read as follows :- "22F. MINERAL FIBRES AND YARN, AND THEREFROM, IN OR IN RELATION TO THE OF WHICH ANY PROCESS IS ORDINARILY CARRIED ON WITH THE AID OF POWER. Explanation I - "Mineral fibres and yarn, and manufactures therefrom" shall be deemed to include - iii) any other mineral fibre or yarn, whether continuous or otherwise such as slagwool 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.

[The photo copy of Item No. 22F as furnished by the appellants' counsel during the course of the hearing does not correctly reproduce the entry. The correct entry as seen from the relevant Finance Act, is as we have shown above.] 8. Glass is, no doubt, as Shri Parthasarathy points out, a man made substance and not a naturally occurring mineral substance such as, for example, asbestos fibre, but for the purpose of Item 22F, "Glass fibre and yarn including glass tissues and glass wool" have been included, by the deeming fiction in Explanation I to the item to be covered by the expression "mineral fibres and yarn and manufactures therefrom".

Therefore, Shri Parthasarathy's submission that, on the basis of his aforesaid contention alone, the subject goods should be held to be not covered within the scope of Clause (iv) of Explanation I, is not tenable. If on a proper reading of that clause, the goods fall within its mischief, they should be classified under Item No. 22F GET.9. In the Bakelite Hylam case (supra) relied on by the counsel for the appellants, the goods were rigid plastic laminated sheets and boards and electrical grade sheets in various thicknesses, sizes and colours.

They were goods comprised plastic material and other materials such as glass and paper. Having regard to the insulating properties of the goods and the explanation to Item 15A(2) GET (by virtue of which electrical insulators and insulating fittings were excluded from the item), the Tribunal held that they did not fall under Item No. 15A(2).

The stress was on the insulating property, not on the composition of the goods. We fail to see the relevance of this decision to the present case.

10. The next decision, again of the Tribunal, relied on by Shri Parthasarathy is that in the case of I.G.P. Engineers (P) Ltd. (supra).

The goods were non-automotive gaskets made of compressed asbestos sheets. By this decision, the words "manufactures therefrom occurring in the main heading of Item No. 22F GET, after the words "mineral fibres and yarn" were interpreted by the Tribunal to imply that a manufacture to fall under the said item, it should be one which was the result of direct manufacture from mineral fibre or yarn and not a manufacture made out of such a manufactured article. Again, we fail to see the relevance of this decision to the present case. It is not the appellant's case that the subject goods are the result of manufacture out of an already manufactured article, comprising mineral fibres or yarn. On the other hand, the goods consist of glass fibre, synthetic resin and certain chemicals, glass fibre content being predominant (about 75%) by weight. Based on this circumstance and the test of predominance of mineral fibres or yarn laid down in Clause (iv) of Explanation I, the subject goods are classifiable under Item No. 22F GET. In this view, we do not deem it necessary to discuss the Tribunal's decision in the case of Mahindra Engineering and Chemical Products case (supra) holding a view apparently different from the one in the I.G.P. Engineers case (supra) on the construction of words "mineral fibres and yarn and manufactures therefrom" occurring in Item 22F.11. The Tribunal's decision in the case of Talbros Automotive Components (supra) relied on by Shri Sachar is of no relevance to the present case since that case pertained in the pre 1-3-1979 entry 22F.(the present case pertains to post 1-3-1979 entry), and the test of predominance of mineral fibres or yarn was absent. Prior to 1-3-1979, the subject goods were being classified under Item 15A(2) GET. However,

in view of Explanation II to Item 15A inserted by the Finance Act of 1979 by virtue of which insulators and insulating fittings were excluded from the item, the goods no longer fell under Item 15A(2). The appellants thereupon claimed classification of the goods under Item No.68 GET. This item being a residuary one, all the other items of the tariff must be gone through and ruled out before the subject goods could be placed under that item. In the light of the foregoing discussion, Item No. 22F is more specific to cover the goods and unlike Item No. 15A(2) CRT, Item No. 22F does not exclude from its purview insulators or insulating fittings.

12. The result is that the goods in dispute fall under Item No. 22F GET. The appeal is dismissed.

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