

Vidyut Udyog Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-29-1991

Reported in : (1992)(60)ELT300TriDel

Appellant : Vidyut Udyog

Respondent : Collector of Central Excise

Judgement :

1. The point for decision before the larger Bench is whether Glass fabrics impregnated with alkyd resin should be classified under 22B of Central Excise Tariff or 22F. 22B CET reads as follows : "Textile fabrics impregnated, coated or laminated with preparation of cellulose derivatives of other artificial plastic materials not elsewhere specified."-----Item

Tariff	Description	Rate	of
DutyNo.	-----	1 2 3	22F

Mineral fibres and yarn, and 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:-(1) Glass Fibre and yarn including glass tissues and Fifteen per cent ad glass wool; valorem.(2) Asbestos fibre and yarn; Fifteen per cent ad(3) Any other mineral fibre or yarn whether continuous Fifteen per cent ad or otherwise, such as slag wool and rock wool; valorem.(4) Other manufactures in which mineral fibres or yarn Fifteen per cent ad or both predominate or predominates in weight.

valorem.Explanation: This Item does not include asbestos Cement Products.----- 3. Shri

B.N. Rangwani, learned consultant appearing for the appellants herein submitted that the Tribunal in the case of CCE, Bombay v. Abeline Engineers reported in 1988 (34) E.L.T. 710 (Tri.) held that impregnated glass fabrics are nothing but glass fabrics impregnated classifiable under Item 22B of Central Excise Tariff and not under Item 22F. However, the learned consultant pointed out in the other decision of the Tribunal in the case of Formica India Division, Pune v. CCE, Bombay reported in 1984 (17) E.L.T. 590 the Tribunal held that the treated epoxy resin glass fabrics were classifiable appropriately under Item 22F and that Item 22B being residuary item, the Tribunal held that such glass fabric would not fall thereunder. Agab in the case of Hatim Dielectrics v. CCE reported in 1985 (19) E.L.T. 621, the Tribunal held that epoxy glass textile sheets classifiable under 22F of Central Excise Tariff on the ground that fibre glass predominates in its composition. More, recently the learned Consultant referred to the decision of the Tribunal in Excel Glass Fibre Industries Pvt. Ltd. v. CCE reported in 1991 (51) E.L.T. 547 (Tri.) wherein the Tribunal held that varnished fibre glass sleeveings manufactured out of fibre glass should be classified under 22F Central Excise Tariff if mineral fibre or yarn predominates. Therefore, the learned consultant urged that classification of the product in the present case should appropriately be under Item 22F Central Excise Tariff.

4. Shri J.N. Nair, learned JDR submitted that the Tribunal decision in the case of Abeline Engineers (supra) had given detailed reasonings in para 6 of that order for classifying impregnated glass fabric under Item 22B of Central Excise Tariff. The Tribunal observed that item 22B covers textile fabrics which are impregnated, coated or laminated with preparations of cellulose derivatives or of artificial plastic materials and which are not elsewhere specified. This is the proper reading of the entry according to the Tribunal in that decision. For such a conclusion the Tribunal had noted the tariff description of certain other items in the Central Excise Tariff like Item 19 which covers cotton fabrics impregnated, coated or laminated and Item 22 covering similar man-made fabric. Such fabrics being specified elsewhere in the schedule are excluded from the purview of Item 22B. The Tribunal concluded in textile fabric impregnated, coated etc. and not elsewhere specified would fall

under Item 22B. Therefore, glass fabric subjected to impregnation, coating or lamination in that view of the matter the Tribunal held that Item 22B was more appropriate. The decision of the Tribunal as above had not been noticed in the various other orders classifying impregnated glass fabric under Item 22F.5. The submissions made by both the parties have been carefully considered. It is seen from the various decisions of the Tribunal cited above for deciding the classification of impregnated glass fabric the only decision which has given a finding that the goods are appropriately classifiable under 22B CET is the one in the case of Albeline Engineers (supra). This is two Members decision of the Tribunal. As against this there are mere decisions of the Tribunal in favour of classification of the treated impregnated glass fabric under Item 22F. In the decision in the case of General Electro Mechanical Industries v. CCE, Pane reported in 1987 (32) E.L.T. 785 (Tri.), the Tribunal held that the product considered therein electrical insulators made of glass fibres consisting of glass fabrics, synthetic resin and certain chemicals with glass fibre contents predominating 75% by weight not by the predominance of mineral fibres or yarn laid down in clause (iv) of Explanation to the Tariff Item 22F before its amendment in 1980 were classifiable under Item 22F. The Tribunal observed that 22F is more specific to cover the goods. There is yet another decision of the Tribunal in the case of Bakelite Hylam Limited, Hyderabad and Ors. v. CCE, Hyderabad reported in 1986 (24) E.L.T. 643 where the Tribunal also had held that glass fabric impregnated with phenol formaldehyde known as Prepreg 'C' was classifiable under Item 22F and had noted the decision of the Tribunal in the case of Formica India Division, Pune (supra) and had held that the product would be classifiable under 22F and not under 22B. Paras 26 to 28 of this decision are reproduced wherein the Tribunal had noted the Department's arguments that the Formica decision of the CEGAT was not acceptable and that Item 22B covers impregnated textile fabrics not elsewhere specified and that the treated glass fabric should therefore fall under that item.

"26. The third item for consideration before us is glass fabric impregnated with phenol formaldehyde known as Prepreg 'G'. In this case also both the sides have stated that the arguments adduced in the case of fabrics will equally apply in this case. On behalf of the Revenue the learned counsel, Shri Lakshmikumaran, has

pleaded that in the case of Formica the Bench of the CEGAT has ruled out the assessment for this under Item 22B and has held that the choice for purposes of assessment is between Item 68 and 22F, CET. He has stated with respect that this position was not acceptable. Our attention has been drawn by him to the wording of Item 22B, CET which item read as under at the relevant time : "Textile fabrics impregnated or coated with preparations of cellulose derivatives or other artificial plastic materials not elsewhere specified." His plea is that glass fabrics are not specified anywhere in the Tariff and since Item 22B covers impregnated textile fabrics n.o.s.

these should fall under this Item. He has pleaded that Item 22F covers mineral fibres and yarn and manufactures therefrom. The glass fabrics which are impregnated are not specifically covered under this description and these therefore should fall under Item 22B, CET. According to him Item 22B, CET was more specific as against Item 22F, CET for the reason that it specifically cover all impregnated textile fabrics not otherwise specified. His plea is that a specific entry should take precedence over a general entry.

27. The learned Counsel for the respondents, M/s. Bakelite Hylam, has, however, pleaded that the choice for the purpose of assessment of impregnated glass fabrics is between 68 and 22F, CET. 28. We observe that Item 22F covers a broad sweep of items and all manufactures of mineral fibres and yarn are covered therein. In this entry it is the material of the product which is the determining factor and for this specificity for assessment under this item has to be seen with reference to the material. Before Item 22F is ruled out we have to get the answer whether by criterion of the material, the goods fall within the ambit of Item 22F, CET or not. In the matter before us it is nobody's case that the goods are not manufacture of mineral fibres and yam. Item 22B in this context, will have to be considered residuary Item so far as the glass fabrics are concerned and 22F, CET as more specific. We find that under Item 22F, CET the glass fabrics by Notification No. 87/76 as amended have been exempted from the payment of duty. We observe that going by the principle of *contemporanea expositio*, this shows the framers of the tariff entry 22F, CET clearly intended the glass fabrics to fall under this entry and on the same logic impregnated glass fabrics would also be covered

under this entry. We, therefore, hold that the impregnated glass fall under Tariff Item 22F, CET." 6. It may also be noted that in this decision of the Tribunal in arriving at the classification it has also noted the Notification 86/76 exempting glass fabric falling under Tariff Entry 22F of Central Excise Tariff from duty as a piece of contemporaneous exposition indicating that the framers of the Tariff Entry 22F clearly intended the glass fabric to fall under this entry. In the Formica India Division case (supra) the Tribunal had considered the different competing Tariff Items 15A, 22(3), 22B, 22F and 68. It observed thereafter that on a closer reading of the tariff it is apparent that the more appropriate item for glass fabrics would be Item 22F, mineral fibres and yarn and manufactures therefrom and further had observed that "It would appear that this is the rationale behind Notification No. 87/76 dated 16-3-1976 showing glass fabrics under Item 22F. Even after the 1979 budget amendment to Item 22F by which sub-clause (iv) of the Explanation to Item 22F was changed from - "manufactures containing mineral fibres and yarn, other than asbestos cement products", "manufactures in which mineral fibres or yarn or both predominate in weight.", glass fabrics would appropriately be classifiable under Item 22F CET. Now, in this background, let us examine whether treated glass fabrics would be classifiable under Item 22F, 22B or 68. Of them, Item 22B is a residuary item and covers only such textile fabrics (impregnated, coated or laminated) as are not specified elsewhere in the tariff. We have seen that glass fabrics fall under Item 22F. Therefore, treated glass fabrics (the goods under consideration) would not fall under Item 22B, CET. 7. It may also be seen that in the Hatim Dielectrics v. CCE (supra) the Tribunal had also noted the Formica decision while confirming classification of epoxy glass textile sheets under Item 22F. From all the decisions as above the classification of such impregnated treated glass fabric under Item 22F would find support subject to the predominance test. The only decision contra noted in the case of Albeline is that of a two Members Bench whereas the other decisions consisting of decision by three Members Bench adopting the reasoning given on the basis of the principle of contemporaneous exposition are more acceptable. Another aspect on the same lines as indicating the intention of the legislature is the Notification 88/76 which was issued along with the creation of new Tariff Item 22F covering mineral fibres and yarn and manufactures therefrom in the Finance Bill 1976. The Notification

88/76 was valid till the enactment of Finance Bill 1976 exempted duty on such goods under Item 18 and 22 and was issued declaring that it was not the intention that after introduction of Tariff Item 22F pending enactment of the Finance Bill excise duty should be levied on such goods both under Item No. 18 and 22 and under Item 22F. In the present case there is on record, the test report dt.

8-7-1982 by the Chemical Examiner, Customs House, Calcutta regarding the sample of glass fabric which was tested for physical properties and chemical composition. The test report shows that the sample received is a rectangular pale brown colour cut piece consisting of piece fabric entirely made of glass fabric yarn coated with a composition containing formaldehyde type of synthetic resin percentage of glass fabric 59.30%.

The test report therefore, indicates that applying the predominance test classification of the goods under Item 22F, CET will be in order.

8. In the result classification of glass fabrics treated with resin in this case under TI 22F, ET is more appropriate.

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