

Collector of Central Excise Vs. Fenner India Ltd.

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SooperKanoon Citation : sooperkanoon.com/9613

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-14-1996

Reported in : (1997)(91)ELT451TriDel

Appellant : Collector of Central Excise

Respondent : Fenner India Ltd.

Judgement :

1. The basic issue for determination in the above appeals is the correct classification of Fenoplast PVC impregnated flame resistant colliery conveyor belting and Food quality PVC impregnated/coated cotton conveyor belting manufactured by M/s. Fenner India Ltd. - whether under Tariff Item 19III of the schedule to the erstwhile Central Excise Tariff as claimed by the Department or under Tariff Item 68 as claimed by the assessees. As all appeals involve a common issue they are heard together and are being disposed of by this common order. C.C.E. v. Fenner India Ltd. - By the above appeal, the Collector of Central Excise, Madurai seeks to set aside the Order-in-Appeal No. 202/89, dated 21-12-1989 of the Collector (Appeals). The assessee has claimed refund of the duty paid during the period December, 1974 to May, 1981 on the ground that duty levied under Tariff Item 19 III was wrong. The Collector (Appeals) remanded the matter to the Assistant Collector for considering the question of limitation as to whether there is valid protest or not, etc. The Department is seeking to set aside this order of the Collector (Appeals) and to restore Order No. 69/87, dated 12-7-1987 of the Assistant Collector dismissing the entire refund claim for the period December,

1974 to May, 1981 amounting to Rs. 3.09 crores.

E/1852/90-D. - Collector of Central Excise, Madurai v. Tenner India Ltd. - The above appeal has been filed by the Department seeking to set aside the Order-in-Appeal No. 203/89-Mdu, dated 22-12-1989 and for restoring the order of the Assistant Collector of Central Excise, Madurai vide Order-in-Original No. 23/89, dated 8-3-1989 holding that Fenoplast PVC impregnated flame resistant colliery conveyor belting and Food quality PVC impregnated/coated cotton conveyor belting manufactured by the respondents fall under the erstwhile Tariff Item 19 III. The Assistant Collector has confirmed the differential duty demand of Rs. 3.67 crores under Section 11A for the period from 1-5-1981 to 28-2-1983. E/1508/90-D.- Fenner India Ltd. v. C.C.E., Madurai. - This appeal has been filed by the Revenue against the order of the Collector (Appeals) dated 21-12-1989. The grievance of the appellants is that the Collector (Appeals) ought not have remanded the matter and allowed the refund claim as claimed by the appellants. This appeal is a cross-appeal to Department's appeal E/1851/90-D as they arise out of the same impugned order.

3. We have heard Smt. Vijay Zutshi, learned CDR and Shri V. Sridharan, learned Advocate and carefully considered their submissions.

4. The basic facts are contained in the order of the Assistant Collector dated 8-3-1989 which is the subject matter of E/1852/90-D. The process of manufacture of PVC impregnated flame resistant colliery conveyor belting is as follows: "The base material is a fabric woven in a specially adopted loom in multiply solid weaving. The yarn used for weaving is a mixture of cotton yarn and nylon yarn. The woven material is then passed through air tank containing polyvinyl chloride compound and the finished product is obtained. The PVC is impregnated in the fabrics." The sample of the product was drawn on 11-10-1986 and sent to the Chemical Examiner, Madras who has reported that the said product contains 65.71% of PVC compound by weight. According to the report, the sample is in the form of grey coloured thick cut piece composed of layers of PVC compound and textile material made of nylon filament yarn and nylon spun yarn and cotton yarn and percentage of PVC compound is 66.6% and percentage of textile yarn is 33.4%. The

percentage of PVC compound in respect of another sample was found to be 66.6%. The Assistant Collector sought to distinguish the decision of the Supreme Court in the case of C.C.E. v. Multiple Fabrics Ltd. -1987 (29) E.L.T.481 classifying identical goods under Tariff Item 68 on the ground that in the case decided by the Supreme Court impregnating with PVC compound was done simultaneously with weaving of fabrics from the yarn which indicated that the process of manufacture was conversion from yarn to fabrics, as also the application of PVC compound simultaneously, while in the present case there is no process as the base fabric has already come into existence prior to its impregnation with PVC compound.

5. We reproduce below Para 4 of the judgment of the Supreme Court containing the ratio and reasoning.

"In view of the higher percentage of PVC compound in commodity, it becomes difficult to treat the ultimate goods as man-made fabrics for holding that it is covered by Item 22. Upon this analysis it follows that the Tribunal came to the correct conclusion when it held that the goods were not covered by Item 22 and, therefore, the residuary Item 68 applied. All these appeals are without any merit and are dismissed. Each of the respondents should be entitled to its costs." 5.1. The weight of PVC compound was 56% in the above case. The Supreme Court held that with this percentage of PVC compound the final product can no longer be described as fabric. The Department has relied upon Para 3 of the Supreme Court judgment to hold that the facts of that case are different from the facts of these cases. Para 3 which is relevant is reproduced below: "It is accepted that yarn is woven into fabrics. Item 19 deals with cotton fabrics while Item 22 deals with man-made fabrics. On the footing recorded by the Tribunal, it is claimed that there was no pre-existing base fabric and the manufacturing process simultaneously brought into existence the commodity by weaving yarn into fabrics and application of PVC compound." We agree with the learned Counsel that the finding of the Supreme Court is that yarn is woven into fabrics and in the rest of that paragraph the Supreme Court merely records one of the arguments raised by the Counsel for the assesseees that the manufacturing process was simultaneous. What is relevant is that no finding has been given on this point and the judgment of the Supreme Court was not based on this submission of the assesseees. The only ratio of the

judgment is that higher percentage of PVC compound used takes the goods outside the purview of the description of fabrics and hence the same do not fall under Tariff Item 22. The Supreme Court judgment affirmed the judgment of the Tribunal reported in 1984 (16) E.L.T. 301. The Assistant Collector in the present case has proceeded on the basis that once a fabric is coated or treated with PVC compound it will fall under Tariff Item 19 HI. This very argument was raised before the Tribunal by the learned DR in the Multiple Fabrics case and was rejected in Para 24 of the order of the Tribunal which is as below : "A point which was sought to be made by the learned Departmental Representative was that sub-item (3) of Item 22 which has been reproduced in Para 19 above refers to fabrics impregnated, coated or laminated with (plastic material). In fact his argument was to the effect that if a fabric once came into existence and was thereafter impregnated coated or laminated with a plastic material, it should be deemed to fall within plastic material, it should be deemed to fall within the sub-item irrespective of the proportion of the plastic material, or the nature of the final product. The wording of sub-item (3) as well as of the main item under which it appears, refers to "fabrics". The fabrics may have been impregnated, coated or laminated with plastic material but they must still be capable of being called "fabrics". Impregnation, coating or lamination are all processes which upto a stage would leave the finished product still capable of being called a fabric. But when the proportion of plastic material reaches such a level that the final product does not retain the characteristics of a fabric. It would not in our view, be proper or correct to treat this final product as an impregnated, coated or laminated fabric, merely because there is a fabric embedded inside it." A perusal of above makes it clear that merely because a fabric was used as a starting material and PVC compound was coated, the belting cannot be classified as fabric under Tariff Item 19 and the degree of coating with PVC compound in the present case excludes the conveyor belting from the purview of the expression "fabrics".

6. Learned CDR's reliance on the order of the Tribunal in the case of Simplex Mills Ltd. v. C.C.E., Nagpur, Order No. E150 to 161/92-D, dated 28-2-1992 for the purpose of establishing the existence of a class of fabrics known as Industrial fabrics, does not advance the case of the Department, as the decision has been rendered in the context of 1985 Tariff and even Para 35 of the Simplex Mills order

sets out that there has been a total restructuring of the Tariff in 1985 and the previous Tariff Item 19 and 22 of the erstwhile Tariff had a broad heading encompassing all kinds of textile and fabrics and also included industrial textile fabrics, as had been noted in the case of Multiple Fabrics. The alternative classification under Tariff Item 22 claimed by the Department is ruled out in view of the order of the Tribunal in the case of Sheel Thermo Plastic Ltd. reported in 1990 (47) E.L.T. 682 wherein it has been re-affirmed that the base material is not important and what is relevant is the predominance of cotton fabrics in the finished product and once pre-dominance is determined on the base fabric which is classified as cotton fabric or man-made fabrics, the finished, impregnated or coated textile fabrics would accordingly fall under Tariff Item 19 or Tariff Item 22 provided in the finished textile fabrics the non-textile components do not predominate. The same view has been expressed by the Tribunal in the case of Rexin Sea (India) v.C.C.E. -1990 (49) E.L.T. 134.

7. In the light of the above discussion and in the light of the Supreme Court judgment (supra) we hold that the two products in question fall for classification under Tariff Item 68 of the Schedule to the erstwhile Central Excise Tariff.

8. Therefore, we upheld the impugned orders and reject E/1851 and 1852/90-D filed by the Revenue. As regards, E/1508/90-D, the lower appellate authority has remanded the matter to the Assistant Collector to examine the refund issue with reference to valid protest having been lodged by the assessees. This is a question of fact which cannot be gone into at this stage and it is to be rightly considered by the Adjudicating Authority on the basis of the evidence before him. We, therefore, see no reason to interfere with the remand order of the Collector (Appeals) and hence uphold the order and reject the assessee's appeal.

10. With due respects to Hon'ble Judicial Member my views and orders in the matter are as follows : 11. I observe that one of the main points to be noticed in this case is as to whether the product in question was essentially material from which conveyor belts or industrial belts were made and if so, how it should be treated.

12. It is noteworthy in this connection that the item has been described as a "belting" and not as "belt". This distinction is important as would be clear from the following illustrations: (i) Suiting Suits A material from which suits Articles made from the fabrics are made.

called suiting.

Mosquito Mosquito(ii) Netting Nets Material from which nets Articles made from the fabrics are made.

called mosquito netting.(iii) Towelling cloth Towels - Articles made from fabric Material from which towels called towelling cloth.

are made.

13. The above examples have been picked up from Notification No. 41 /65 as amended from time to time, but can be multiplied.

14. It is interesting to note that in the Notification No. 70/69 as amended by Notification No. 222/69 etc. from time to time, providing for exemption to cotton fabrics falling under sub-item 1 of Item 19 Entry (XII) reads as follows : "Unprocessed cotton hose and pipes and belting woven as such", which shows that the Government considered belting as an item falling under sub-item 1 of Item 19 but exempted from the whole of duty of excise leviable thereon in terms of this Notification.

15. I also observe that these aspects were not noticed by the Tribunal in its order in the Multiple Fabrics case reported in 1984 (16) E.L.T.301. In this case, the Tribunal while referring to the new Encyclopaedia of Textiles, considered the definition of the term 'industrial fabrics' which includes the following examples : "Prominent in this group are such textile products as machine belting, straps, pads and similar types of fabrics or yarns, both man-made and natural" and also the argument that since this Encyclopaedia is published by the Editors of American Fabrics and Fashions Magazines, it can rightly be regarded as conveying the understanding of trade and industry; 15.1. But it did not agree to adopt this [definition] on the ground that in a sense it is a technical work and includes a very

wide range of meanings which might not correspond to ordinary usage observing, inter alia, that the expression 'industrial fabrics' as used in this work has a very extended meaning and it would not be sound to make this a ground for classifying the goods under consideration as fabrics, when the general and usual understanding, whether of trade and industry or of the common man is not in accordance with such use.

16. However, the Notification No. 70/69 as amended (supra) itself includes 'belting' under sub-item 1 of Item 19 or in other words gives the industrial fabrics same or similar extended meaning as has been mentioned in the above Encyclopaedia.

17. This gains importance in the context of the manufacturing process which undisputably brings into existence at first a fabric which is then impregnated with PVC as apparent from the process indicated by AC and reproduced in Paragraph 4 of Hon'ble Member Judicial's order.

18. Again it is in view of this process that the Supreme Court judgment in the case of Multiple Fabrics reported in 1987 (29) E.L.T. 481 (SC) can be distinguished; 19. To my mind, it is not correct to say that only the last Paragraph 4 reflects the order of the Court and not Paragraph 3 or vice versa for the judgment has to be read as a whole.

20. The other orders of the Tribunal including the case of Rexin Sea India - 1990 (49) E.L.T. 134 does lay emphasis on the percentage content of cotton fabrics versus other material and in the Supreme Court judgment also the higher percentage of PVC compound has been emphasized. However, it is interesting to note in this connection that the Tribunal in its order in Multiple Fabrics specifically refers to the fact that it is composed of synthetic resin of PVC type reinforced with textile fabric containing 42.3 per cent by weight of cotton, whereas the Hon'ble Supreme Court in its order notes that it is clear that there was no pre-existing base fabric and the manufacturing process simultaneously brought into existence the commodity by weaving yarn into fabric and application of PVC compound and it was with reference to this context that it gave the verdict keeping in view the higher percentage of PVC. 21. In our case the Assistant Collector has emphasized that the base material is a fabric woven in a specially adopted loom in multiply

solid weaving. The yarn used for weaving is a mixture of cotton yarn and nylon yarn. The woven material is then passed through air tank containing Polyvinyl Chloride compound and the finished product is obtained. The PVC is thus impregnated in the fabric.

22. I consider in the above context that on one hand, we have to take note of the extended meaning given to the word 'cotton fabrics' in the Central Excise Tariff which covers not merely fabrics as normally understood in trade or common parlance but includes products made of cotton fabrics including those prepared by subjecting them to various processes or treatment or which may have been cut to shape or size and are known as distinct commodity in the market.

23. In view of this extended meaning which has been taken note of in the Notification cited above and which specifically refers to belting woven as such, we will be hard put to ignore the definition of industrial fabrics and the inclusion of belting therein as given in the Encyclopaedia for the simple reason that it shows that such an extended meaning was not only known to trade in America but also in India.

24. It may be noted at this stage that both the sides have described the products in question as belting and the Department has rightly drawn our attention to the difference in belting and belt mentioned in the Chambers Dictionary of Science and Technology.

25. It is also interesting to note that in the Classification List the A.C. had classified 'unprocessed cotton beltings woven as such' as also 'cotton elevator or conveyor belting' under 19(I) but no dispute appears to have been raised regarding such classification before us and the Department has stated that Assistant Collector's order, dated 2-4-1976 had become final. It is this very order which classifies the Phenoplast PVC impregnated flame resistant colliery conveyor belting and food quality plastic coated conveyor belting under 19(III). This aspect was also required to be kept in mind inasmuch as if cotton belting could be considered as a fabric, why not PVC impregnated or plastic coated belting? 26. Further I also observe that belting has been defined in the McGraw-Hill Dictionary of Scientific and Technical Terms as "a sturdy fabric usually of cotton used in belts".

27. The use of the fabric in the above definition is significant and shows that belting is a type of fabric used for making belts and further that it is usually of cotton. That is why, apparently, it had been included in the list of exemption items in the aforesaid Notification which has been issued under 19(I).

28. In the Simplex Mills case which is the latest order of the Tribunal, cited before us 'belting' was one of the items under consideration and the Bench had occasion to observe that "the previous Tariff Item 19 and 22 of erstwhile Tariff Act had a broad heading and encompassing all kinds of textiles, textile fabric, and it also included industrial textile fabrics".

29. This Bench had also noticed that the term 'belting duck' is defined as a term for the fabric employed in the manufacture of belts used for the transmission of power or for conveying materials such as coal iron ore etc. ... Belting ducks are made in a wide range of constructions and widths to the specifications of the belt manufacturer. They are woven with the strength predominantly in the direction of the warp; 30. And the term transmission belting means "a heavy fabric which is usually made in 'V form or flat" (as per extracts from Fairchild Dictionary of Textiles); 31. Further while referring to transmission or conveyor belting of textile material the Bench had observed, inter alia, that 'belting' is always in running length and can be with or without reinforcement, or impregnation or coating.

32. It is true that the Tariff was restructured after the period to which our case relates. But that does not mean that we cannot take note of the observations and findings of the Bench regarding the nature and type of material as culled out from a study of various authoritative works including encyclopaedias and dictionaries and the way this material is commonly known and treated in the trade and industry.

33. In view of this discussion, I consider that conveyor beltings called Phenoplast beltings are materials in the nature of impregnated/coated industrial fabric or textile fabric impregnated/coated with PVC/plastic (for industrial use).

33.1. I also consider that the ambit of Tariff Item 19 (under old tariff) was wide enough to cover such materials but their classification under this Heading or

otherwise was governed by the conditions mentioned therein.

34. It is in the context of above discussion that we have to examine the correctness or otherwise of the orders in appeal.

35. In Appeal No. E/1851/1990-D filed by the Collector of Central Excise, Madurai against Order No. 202/89, dated 21-12-1989, the Collector has remanded the matter for examining the refund claim with reference to time bar aspect after holding that it was classifiable under Tariff Item 68.

36. The Department has challenged this order both on merits and on time bar.

37. Since the classification had already been determined finally under Tariff Item 19 (III) by the order of Assistant Collector, dated 2-4-1976 (page 101) vacating the protests and this order was not set aside. Therefore, it becomes final; Hence the refund claim was not only time barred but it was not open to the appellants to re-agitate the matter on the basis of same facts and same provisions of law. The Collector's order is, therefore, erroneous both on merits and on time bar and there was no question of remand.

38. Hence the order was liable to be set aside irrespective of the decision on merits.

39. In Appeal No. E/1852/90-D, I find that the Collector (Appeals) has erred on basic facts inasmuch as he has considered the product as conveyor belt whereas according to the submissions made by both the sides, before us, it is belting (as distinguished and distinguishable from belt).

40. The Collector (Appeals) has also erred in holding that it could not be considered as a fabric, whereas, as apparent from the above, discussion belting was a type of industrial fabric.

41. Furthermore, the Department is correct in emphasizing that under Tariff Item 19, it is the percentage of base fabric, which was required to be seen and the item remains classifiable under Tariff Item 19, if base fabric contains more than 40 per cent by weight of cotton 'yarn' and 50 per cent more than by weight of non-

cellulosic fibre or yarn or both as evident from the proviso to Tariff Item 19 which emphasizes that the predominance or percentage shall be in relation to the base fabric. The total percentage of PVC compound in the product as a whole is, therefore, not material or relevant in view of this specific provision in the entry itself. Hence the Chemical Examiner's report does not help the assessee.

42. Further according to the Department, the order of the Assistant Collector, dated 2-4-1976 has not been set aside or modified by any higher authority; And even according to the respondents, after the order of the Appellate Collector, dated 30-6-1976 (by which their appeal against the AC's order, dated 2-4-1976 was rejected) no further proceedings were taken in relation to that order. Therefore, the assessees were no longer free to re-open the issue on the basis of the same facts and same provisions of law and the successor Assistant Collector was justified in taking note of an already existing order of Assistant Collector in force.

42.1. Since the impugned order of the Collector (Appeals) ignores the above aspects, it was defective on this score as well.

43. Hence the impugned order of the Collector (Appeals) was liable to be set aside.

44. In view of the above observations and findings the appeals of the Department (i.e. E/Appeal No. 1851/90-D and E/Appeal No. 1852/90-D) are accepted; 45. And the appeal of M/s. Fenner India Ltd. (E/A. No. 1508/90-D) is rejected.

In view of the difference of opinion between the Hon'ble Member (Judicial) and the Vice President, the matters are submitted to the Hon'ble President for reference to a third Member on the following point: (1) Whether the products in question were industrial fabrics classifiable under erstwhile Tariff Item 19(III) or were items classifiable under Tariff Item 68.

(2) Whether the refund claims filed by M/s. Fenner India were time barred, and/or non-maintainable.

(3) Whether in the facts and circumstances of the case, including the findings on the above points, the appeals of the Department were required to be accepted or rejected and the appeal of M/s. Fenner India Ltd. was required to be accepted or rejected.

Sd/- Sd/- 46. Arguing on the point of difference, the Id. DR submits that Hon'ble Apex Court in case of C.C.E., Hyderabad v. Fenoplast (P) Ltd. reported in 1994 (72) E.L.T. 513 (SC) has, with reference to the case of C.C.E., Calcutta v. Multiple Fabrics P. Ltd., reported in 1987 (29) E.L.T. 481 (SC), since given a contrary judgment holding that the decision in case of Multiple Fabrics P. Ltd. (supra) does not lay down the correct position in law and therefore reliance placed by Id. Member Oudicial) on that case is not available in aid of the Respondents. In fact the issue of classification as between Tariff Item 68 and Item 19(III) has been specifically discussed in the later judgment of the Hon'ble Apex Court in case of C.C.E., Hyderabad v. Fenoplast (P) Ltd. - 1994 (72) E.L.T. 513 (SC) where the Apex Court held that fabric correctly classifiable under Tariff Item 19 (III).

47. Since the classification had already been determined finally under Item 19(III) by the Assistant Collector and this order was not set aside and it had become final, the refund claim was not only time-barred but it was not open to the Respondents to reagitate the matter on the basis of the same facts and provisions of law. There could therefore be no question of remand in Appeal No. E/1852/90-D. The matter having been concluded by the judgment of the Hon'ble Apex Court in case of Fenoplast (P) Ltd. v. C.C.E., Hyderabad, decision of the Collector (Appeals) holding goods are classifiable under Item 68 is wrong.

48. Arguing for the Respondents Id. Counsel fairly conceded that since then a view contrary to the view expressed in case of Multiple Fabrics P. Ltd. has been held by the Apex Court. He, however, forcefully argued that the goods were impregnated with Vinyl Chloride and therefore such cotton fabrics cannot be considered, within the meaning of Tariff Item 19(III), as impregnated or laminated with preparations of cellulose derivatives or of other artificial plastic materials. He submitted that the Hon'ble Apex court in the case of C.C.E. v. Fenoplast P. Ltd. did not give any specific finding as to whether the material in question was impregnated with

artificial or synthetic material other than materials mentioned in Tariff Item 19. The cotton fabrics lost their identity as cotton fabrics and in this respect placed reliance on the Government of India decision in case of G.O.I. v. Dunlop India Ltd., reported in 1982 E.L.T. 634 (GOI). Since in their case fabrics were impregnated with materials other than those such as were specified in Tariff Item 19 the cotton fabrics after impregnation with Poly Vinyl Chloride would no longer remain under Tariff Item 19. In otherwords, since cotton fabrics are not impregnated with cellulose derivatives or other artificial plastic materials but are impregnated with synthetic material, they would no longer be classifiable under Item No. 19 and therefore should go to Tariff Item No. 68. He submitted that Vinyl Chloride is a synthetic resin and not artificial resins. Since materials referred to Tariff Item 19 are only artificial plastic materials these goods are not covered by Item 19. The distinction between artificial and synthetics is clearly spelt out in Section Note No. 2(D) of Section XI of Schedule to the Central Excise Tariff Act, 1985. Synthetics in this section note refers to Polymerisation of organic monomers, such as Polyamides, Polyesters, Polyurethanes or Polyvinyl derivatives and artificial to such goods as obtained by Chemical transformation of natural organic polymers (for example cellulose, casein, proteins or algae), such as viscose, rayon, cellulose acetate, cupro or alginates.

49. Referring to Id. Vice President's observation that refund claim is not maintainable since the Assistant Collector had already decided the matter in 1976, he submitted that this fact would not come in the way of claim; such claim subject to limitation can always be filed. C.C.E., Hyderabad v. Fenoplast (P) Ltd. (supra) which considered the earlier decision of Apex Court in case of C.C.E., Calcutta v. Multiple Fabrics P. Ltd. -1987 (29) E.L.T. 481 (SC) it was argued before the Hon'ble Apex Court that the degree and impregnation of fabrics is such that cotton fabrics loses its identity as cotton fabrics and a distinct product emerges and therefore the resultant product cannot be regarded as cotton fabrics within the meaning of Tariff Item 19. Negating this contention the Hon'ble Apex Court held this argument does not take into account the fact that the Parliament has chosen to include coated/laminated fabrics within the ambit and purview of cotton fabrics and Parliament's power to do so cannot be questioned. To start with, it is a cotton cloth upon which coating material is applied. The Apex Court therefore held that

while cotton fabrics fall under sub-item 1 of Item 19, other three categories included within the ambit of cotton fabrics fall under sub-item (ii), (iii) and (iv) respectively.

51. I now take up the second contention that coating material is neither preparation of cellulose derivatives nor "other artificial plastic material". It was argued that product in question is coated with Polyvinyl Chloride which is a synthetic resin and is different from artificial resins.

52. I find this very question was specifically raised before the Hon'ble Apex Court in case of C.C.E. v. Fenoplast (P) Ltd. where Apex Court rejected the contention and held that the coating material employed by the Respondents in this case was predominantly, if not wholly, "other artificial plastic material." Even the plea of remand for arriving at a finding in regard to this aspect was rejected.

In view of the reasons set out in Paragraph 37 and 42 of the Id. Vice President's order I agree that the Refund claims were time-barred as also not maintainable.

(i) I agree with the Id. Vice President that the products in question were classifiable under Item 19(iii).

(ii) I agree with the Id. Vice President that refund claims were time-barred and not maintainable also.

(iii) I agree with the Id. Vice President that the appeals of the Department were required to be accepted and appeal of the Fenner India Limited are required to be rejected.

(1) The products in question were industrial fabrics classifiable under erstwhile Tariff Item 19(iii).

(2) The refund claims filed by M/s. Fenner India were time-barred and not maintainable also.

(3) In view of the above position, the appeals of the Department were required to be accepted and the appeal of M/s. Fenner India Ltd. was required to be rejected.